

# **Code of Ethics of Public Prosecutors Commentary**

**OFFICE OF THE PROSECUTOR GENERAL**

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## ***Introduction:***

On 16 April 2019 in Brno, head public prosecutors having competence in personnel matters adopted the Code of Ethics of Public Prosecutors (hereinafter referred to as the “Code of Ethics”), effective from 1 May 2019. The purpose of the Code of Ethics is to serve as a joint expression of fundamental values on which the trustworthiness, seriousness, and dignity of the public prosecutor’s office is based. The essential thing is that this statement is truly joint, confirmed by head public prosecutors with personnel competences, following a discussion and rounds of comments from the entire public prosecution system. This means that the Code of Ethics will become the only joint code of Ethics of Public prosecutors in the public prosecution system.

Various codes of ethics had been issued in the past for public prosecutors:

**Code of Professional Ethics of Public Prosecutors** – drafted by the Office of the Prosecutor General;

**Moral Code for Public Prosecutors** – drafted by the Czech Union of Public Prosecutors;

**Codes of Ethics of Public Prosecutors** – adopted as a part of internal anti-corruption measures by individual public prosecutor’s offices.

The Code of Ethics thus replaces the Code of Professional Ethics of Public Prosecutors and codes of ethics that are comprised in internal anti-corruption measures at individual public prosecutor’s offices. The Code of Professional Ethics of Public Prosecutors was also used as the foundation in the drafting of this commentary, and some of the passages have been taken over.

The Code of Ethics, which is now uniform for the entire public prosecution system and for all public prosecutors, expresses the unquestionable importance of ethical values and ethical principles and the requirement of ethical conduct of public prosecutors.

One of the initiatives leading to the enactment of this Code of Ethics was a recommendation from an evaluation report adopted by the GRECO with respect to the Czech Republic in round four of evaluations at its 72<sup>nd</sup> plenary session on 1 July 2016, file no. GrecoEval4Rep(2016)4, which stated:

*xii. (i) that a code of professional conduct for all public prosecutors – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues (e.g. on gifts, secondary activities, third party contacts/confidentiality, etc.) – be developed, communicated effectively to all public prosecutors, and made easily accessible to the public; (ii) that it be complemented by practical measures for its implementation, including confidential counselling and dedicated training.*

Here, a reference would also be appropriate to the most important international sources of which public prosecutors' offices take heed and which were also used as resources in the drafting of the Code of Ethics, in particular:

- Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to Member States on the Role of Public Prosecution in the Criminal Justice System;
- Opinion No. 9 (2014) of the Consultative Council of European Prosecutors (CCPE) for the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors – known as the Rome Charter, of 17 December 2014;
- European Guidelines on Ethics and Conduct for Public Prosecutors – “Budapest Guidelines” – adopted at a conference of European prosecutors general on 30 May 2005 in Budapest, CPGE (2005)05,
- The Bangalore Principles of Judicial Conduct 2002 - The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002,
- Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors (IAP) on 23 April 1999 in Amsterdam.

The Code of Ethics builds on the statutory regulation embodied in Act No. 283/1993 Coll., on the office of the public prosecutor, as amended (hereinafter referred to as the “Act on the Office of the Public Prosecutor”). First, the text of the oath of public prosecutors must be mentioned, which is set out in Section 18 (3) of the Act: *“I swear on my honour and conscience that, in protecting public interests, I shall always proceed in accordance with the Constitution and laws of the Czech Republic as well as international treaties by which the Czech Republic is bound, will respect human rights, fundamental freedoms, and human dignity, and keep confidential any and all facts that come to my attention in connection with the performance of the duties of the office of a public prosecutor, including after leaving the office. In performing the duties of the office of a public prosecutor and in my private life, I will defend the dignity of my profession.”*

A public prosecutor's oath is not a mere proclamation. It is a fundamental summary of the obligations of a public prosecutor, which are further elaborated in individual provisions of the Act on the Office of the Public Prosecutor. By taking that oath, a public prosecutor makes a solemn declaration that he or she will adhere to them.

The Act on the Office of the Public Prosecutor regulates the obligations of public prosecutors primarily in Sections 24 and 25. Hence, some of the ethical rules come in the form of direct statutory provisions. Therefore, it is not possible to interpret the relevant provisions of the Act on the Office of the Public Prosecutor and of the Code of Ethics in isolation, but always in a mutual context.

Ethical rules cannot be mistaken for the rules of etiquette, i.e., the rules of decent social behaviour. At the same time, however, the line between a public prosecutor's ethical conduct and rules of decent behaviour to which he or she should adhere is not sharply defined and, in certain cases, the two groups overlap. That is why the Code of Ethics incorporates provisions that at first sight seem to be merely rules of decent social behaviour; at the same time, they have a broader reach and it was deemed necessary to set it out at least in an outline.

Comments on the Code of Ethics should be a live document able to respond to current suggestions and life circumstances of public prosecutors, both in professional terms and in human terms. That is why individual provisions of the Code of Ethics are supplemented not only with explanatory notes, practical examples are illustrated with selected disciplinary and other relevant decisions and opinion (explicitly related both to public prosecutors as well as to judges, as they are subject to very similar requirements placed on them).

Generally speaking, a public prosecutor should be able to address ethical issues related to the performance of the duties of his office himself, but at the same time, he should be able to seek advice and assistance in more difficult circumstances occurring in his professional or personal life. Such advice and assistance should be provided, above all, by the appropriate head public prosecutors. The Code of Ethics, the possibility to consult pursuant to Article IV, a measure whereby the Code of Ethics of Public Prosecutors is issued, and these comments, are designed to assist in that. By their very nature, these consultations are informal, not binding, and do not exempt the public prosecutor from responsibility for his actions.

The Code of Ethics is not explicitly binding for prosecutor trainees but, given that they are preparing for the performance of the duties of the office of a public prosecutor, their traineeship should also include the adoption of ethical rules applicable to the performance of the duties of that position. Prosecutor trainees become actively acquainted with the rules set out in the Code of Ethics and abide by them during their traineeships.

## ***I. Legality and independence***

Text of the Code of Ethics:

### ***I. Legality and independence***

*A public prosecutor shall exercise the competences of the public prosecutor's office thoroughly in accordance with the law and his conscience, independent of other bodies and of local, political, private, or other influences and interests.*

A public prosecutor is bound by the law. That means the Constitution of the Czech Republic, the Charter of Fundamental Rights and Freedoms, binding international treaties, acts, and implementing legal regulation. Naturally, a public prosecutor must also abide by applicable European legislation.

A public prosecutor must act independently of other bodies and institutions and shall refuse any attempts at unauthorised intervention by political, economic, and other private or public entities. A public prosecutor shall therefore not permit such entities to intervene in his activities beyond the scope permitted by law. He must not be afraid to object against such interventions and influences.

Contrary to independent exercise of powers is not the respecting of established case law, established decision-making of higher public prosecutors' offices, and respecting of binding instructions imposed in line with the law within the public prosecution system. Independent exercise of powers does not include steps taken obviously in contravention of the previous sentence if there are due reasons for taking those steps. Independence in the exercise of powers cannot be used as defence in the event of a manifest error and it cannot be used as cover for the lack of knowledge. A public prosecutor may refuse to fulfil an instruction imposed on him by internal or higher-instance supervisor, but such situations should be exceptional and should always be based on serious reasons (the seriousness of the reason due to which an instruction is refused should correspond to the potential consequence, which is the replacement of the person responsible for the case, of the competent public prosecutor).

A public prosecutor should not be, in the exercise of his powers in line with the law and his conscience, influenced by personal benefit consisting of actual or potential career advancement.

Further influences and interests of which a public prosecutor should steer clear in the exercise of his duties have to do with external pressure. This does not include standard control and management relations in the public prosecution system or attempts to harmonise procedures in the public prosecution system in the exercise of its duties (including respecting a single joint or local criminal policy).

Independent exercise of the duties of the position of a public prosecutor is in standard cases not prejudiced by cooperation with other public authorities, while mutually respecting each other's positions and competences.

A public prosecutor should not let himself be influenced by local, political, private, or other influences, and should not exert any such influences over others.

A public prosecutor must not only understand that it is important to act objectively in a specific situation; he must also see what his conduct looks like to the outside world.

A public prosecutor may encounter situations in the execution of his duties when he considers an activity to be in stark opposition to his conscience (for example due to his religious or moral beliefs). Even a public prosecutor is entitled to exercise the reservation of conscience<sup>1</sup> and declare himself biased, thereby excluding himself from handling or deciding on a certain matter. Such cases should, however, be absolutely exceptional: a public prosecutor accepts his position with all of its contents and should not take it on should he be regularly unable to perform his duties.

At the same time, it must be stated that both generally and if the reservation of conscience is used, declaring oneself biased should not be abused, for example to get rid of a case that is complicated in terms of facts or law.

This provision of the Code of Ethics ties into:

- Section 3 (1) of the Act on the Office of the Public Prosecutor, which states: "*Unless the law stipulates otherwise, matters entrusted to the competence of the office of the public prosecutor shall be dealt with by public prosecutors; no other authorities or persons may intervene in their activities or substitute for them or replace them in the performance of those activities*";
- Section 24 (1) sentence two of the Act on the Office of the Public Prosecutor, which stipulates that "*Any external intervention or influence the consequence of which may be a breach of any of these obligations must be refused by him.*";
- Section 24 (2) (a) of the Act on the Office of the Public Prosecutor, which lays down obligations for the public prosecutor as follows: "*In the exercise of the duties of his office, he must not let himself be influenced by the interests of political parties, public opinion, or the media*".

Overview of certain decisions and position statements:

**Judgement of the Supreme Court of 4 April 1995, file no. Can 4/95:**

*A public prosecutor has committed a disciplinary offence by, following his exclusion from all supervisory tasks in criminal proceedings, he intervenes with the investigating officer and with his superior by telephone in order to arrange for a permission for the accused in criminal proceedings to travel abroad.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 19 January 1995, file no. 2 Spr 187/94:**

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<sup>1</sup> Reservation of conscience – a method of resolving a person's conflict of conscience, when on the one hand, there is a legally embodied obligation which in a specific example runs contrary to the person's conscience (namely, the person's moral or religious convictions).

*A public prosecutor has committed a disciplinary offence if, as the public prosecutor performing supervision in a criminal case against an accused police officers, writes a letter to the superior of the accused police officer, in which he intercedes for the accused police officer to be permitted to continue to work for the Czech Police, failing to present that letter, in contravention of the applicable organisational and approval rules, to the head public prosecutor.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 5 March 2013, file no. 12 Ksz 14/2012:**

*A public prosecutor has breached an obligation pursuant to Section 24 (2) of the Act on the Office of the Public Prosecutor by requesting information from pending criminal proceedings in a case of which he is not in charge, without presenting credible reasons for his request that are of relevance to the provision of information in criminal proceedings in the public prosecution system, thereby jeopardising trust in the impartial exercise of his duties as well as the public prosecutor from whom he is seeking the information.*

**Judgement of the Supreme Administrative Court of 10 May 2011, ref. No. 13 Kss 11/2010 – 51:**

*A failure to respect a binding legal opinion comprehensibly formulated and stated by the court of appeal in the setting-aside decision may give rise to questions about the proper functioning of the judicial system, both at courts internally, and, above all, to the external world, and is liable to harm the dignity of the judicial function of jeopardise confidence in independent, impartial, professional, and just decision-making of courts. Such a case constitutes a culpable breach of obligations of a judge set by the law (here Section 149 (6) of Act No. 141/1961 Coll., Code of Criminal Proceedings) and qualifies as disciplinary offence pursuant to Section 87 (1) of Act No. 6/2002 Coll., on courts and judges.*

**Judgement of the Supreme Administrative Court of 7 March 2018, ref. No. 16 Kss 7/2017 - 223):**

*I. In a relationship between instance, a lower-instance judge may be bound and must respect, in evaluating evidence, a conclusion made by a higher instance with respect to the procedure of obtaining evidence and method of evaluating its credibility. Hence, he may be bound exactly to the extent to which the discovery of the facts of the case using the evidence concerned is “objective” (two judges arrive at the same conclusion in mutual reflection). He may not, however, be bound with respect to conclusions which are beyond the objective, i.e., based on an a-priori judgement, internal conviction, feel. In practice, he can therefore be obliged to revise his opinion as to the evaluation of evidence if a higher instance reproaches him for example for an error of logical judgement or of another similar thought process, or for an omission in taking into account circumstances that “objectively” cast doubt on the credibility of a piece of evidence and which are evident from available information that can be used in the procedure (typically, from other evidence obtained), and are to a fundamental degree based on something other than an a-priori judgement, internal conviction, or a feeling of a judge.*

*II. A disciplinary punishment for a failure to respect the instructions of a higher judicial instance shall only be possible in exceptional situation, as the last resort after more moderate means failed repeatedly. This means that a remedy of errors*

*of lower-instance courts should first be made by means of appeal (or other similar instruments). If that does not suffice, it is appropriate, in well justified cases, to take the case away from the relevant court or judicial chamber (in criminal proceedings, see Section 149 (5), Section 262 of the Code of Criminal Proceedings). Only when those means fail in the case of a specific judge, and not on an isolated basis but rather, repeatedly, and the overall evaluation of his activities shows that the judge is, in the long term, unable to decide such that the judicial system deliver consistent outputs through his work, it is appropriate to consider a disciplinary punishment.*

## ***II. Impartiality***

Text of the Code of Ethics:

### ***II. Impartiality***

*A public prosecutor shall refrain from granting any undue advantage or disadvantage to any person in the exercise of the duties of his position. He shall refrain from any activity that may as much as give rise to questions about his impartiality.*

In exercising his competences, a public prosecutor must not put anyone at an advantage or disadvantage due to his nationality, race, ethnic origin, religious or political conviction, sexual orientation, for being a member of a certain age or social group, or for the subjective impression that a specific person makes on him. A public prosecutor, aware of circumstances that may call his impartiality into question, must himself apply the statutorily defined procedure leading to his exclusion from handling or deciding about a specific case. In this regard, he must withstand any influence of public opinion or of the media and not subject the exercise of his competences to public publicity.

A public prosecutor cannot, however, exist in isolation from the realities of the world and from the needs of communication not only within the public prosecution system and with public authorities with which he comes into contact in the exercise of the duties of his position, but also externally. Any provision of information to the media (in any form) must be made not only within the limits set by the law (e.g., Section 8a and ff. of the Code of Criminal Proceedings), but also with restraint, comprehensibly, and with dignity. Even though the public prosecutor's office may have an active media policy (which, in general, is not a bad thing) and report on its activities within the bounds set out above, it should not do so in an activist manner, pandering to the media (this applies to the personal initiative of individual public prosecutors, as well).

As concerns private activities and impact on the impartiality of a prosecutor, see also commentary on Article IV.

This provision of the Code of Ethics ties into:

- Section 24 (1) sentence one of the Act on the Office of the Public Prosecutor, which stipulates that *"In exercising the duties of his position, a public prosecutor shall fulfil his tasks responsibly, while respecting the principles set for the activities of public prosecution; in particular, he shall proceed professionally, conscientiously, responsibly, impartially, fairly, and without needless delays"*;
- Section 24 (2) of the Act on the Office of the Public Prosecutor which lays down obligations for the public prosecutor as follows: *"In exercising the duties of his position, in his private life, as well as in the exercise of his political rights, a public prosecutor shall refrain from anything that may give rise to reasonable doubts as to his adherence to the obligations set out in paragraph 1, jeopardise the seriousness of the position of public prosecutor or the seriousness of public prosecution or jeopardise confidence in impartial and professional exercise of the duties of state prosecution or a state prosecutor"*.

Overview of certain decisions and position statements:

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 3 April 2014, file no. 12 Ksz 5/2011:**

*If a public prosecutor accepts money from a loan arranged with a person with respect to whom a criminal case supervised by the public prosecutor's office was set aside, in which case the public prosecutor held a leadership position, she has committed a breach of the obligation set out in Section 24 (2) of the Act on the Office of the Public Prosecutor, i.e., to refrain in her private life from anything that may jeopardise confidence in impartial and professional exercise of the duties of state prosecution or a state prosecutor.*

**Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of April 2011:**

*The Ethical Committee of the Union of Public Prosecutors concluded that JUDr. M. P. breached point 9 of the Moral Code for Public Prosecutors as well as Section 24 (2) of the Act on the Office of the Public Prosecutor, when, as she states, she and her husband entered into an advantageous loan agreement with a creditor of whom she knew that he had been, not long before entering into that relationship of obligation, investigated as a suspect in criminal proceedings which were supervised by a public prosecutor from the District Office of the Public Prosecutor in Prachatice, of which she was the head at that time. In line with Section 24 (2) of the Act on the Office of the Public Prosecutor JUDr. M. P. should have duly accented that fact in her private life, and by no means enter into advantageous relationships of obligation with such a person as such actions undoubtedly jeopardised, in the eyes of the public, confidence in impartial exercise of the competences of state prosecution.*

*Furthermore, the Ethical Committee agreed that JUDr. M. P.'s appearance before the journalist Janek Kroupa on 1 April 2011 was not in line with point 6 Of the Moral Code for Public Prosecutors, as it was not dignified. The Ethical Committee, however, considers the undignified contents of that media appearance to be a significantly less serious error in ethical terms than was the case in the conclusion of the above-mentioned loan agreement.*

**Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of June 2011:**

*The Ethical Committee of the Union of Public Prosecutors considers the holding of art exhibitions or vernissages by head public prosecutors on the occasion of a traditional Christmas meeting of public prosecutors and friends of the head public prosecutor on the premises of the office of public prosecutor, paid from the office's budget, in cooperation with businesses many of which are parties to criminal proceedings supervised by the public prosecution system, in the position of damaged persons, reposting persons, or persons otherwise involved in criminal proceedings, to constitute a moral error in the form of a breach of point 9 of the Moral Code for Public Prosecutors. Such actions, enhanced by the fact that such businesses provide the office of public prosecutor with an advantage in the form of a free loan of their works of art for events of such nature, may absolutely unquestionably jeopardise confidence of the public in the impartial exercise of the competences of public prosecution and reduce the prestige of public prosecution.*

**Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of November 2012:**

*According to the Ethical Committee, public prosecutors' membership in Rotary clubs does not violate the rules of professional Ethics of Public prosecutors or the text of Section 24 of the Act on the Office of the Public Prosecutor. The Ethical Committee does, however, urge all public prosecutors to always consider, responsibly and thoroughly, both their involvement in various associations and clubs and their public presentations related to membership therein, not only from the point of view of applicable legislation, but also with a view to the rules of professional ethics related to their position. In the case of active participation and public appearances related to membership in such associations, the Ethical Committee recommends a certain level of temperance and moderation as it must always be kept in mind that the impartiality, fairness, and the related trustworthiness and prestige of our profession are extremely valuable categories that the entire public prosecution system must affirm in the eyes of the public, and never lose.*

**Judgement of the Supreme Administrative Court of 30 May 2018, ref. No. 16 Kss 1/2018 – 207:**

*I. The bias of a court is based on the existence of a “reason to question” – serious reasons to think that the judge might not be unbiased.*

*II. The “reason to question” must have specific factual grounds and its level. The level of the “reason to question” must be appropriate. It is not enough that a line between the judge and the case at hand may be traced. In order for a certain line of relationship to give rise to a bias, it must be of sufficient importance to the judge. Judges are professionals accustomed to routinely rule on matters on the basis of relatively objective criteria and in that regard, they are, in a normal situation, usually able to free themselves of their subjective feelings, attitudes, and inclinations. Similarly, it is entirely commonplace that in connection with their position, they repeatedly come into contact with people whom they know and which many of whom they have professional friendships. Bias may only be spoken about if the intensity of the judge's relationship to the case at hand is beyond critical.*

*III. A judge's disciplinary responsibility for not addressing his potential bias in a manner envisaged by procedural regulations can only arise if the judge himself was able to identify that he objectively has a certain relationship to the case that may give rise to a bias. A judge must exercise a certain level of vigilance or precaution. He must strive to view various aspects of his potential relationship to the case with the eyes of an intelligent layman from outside of the judicial practice and consider how such a person would view those aspects.*

**Decision of the disciplinary board of the Supreme Administrative Court of 19 October 2011, ref. No. 11 Kss 1/2011-131:**

*A judge who having found in enforcement proceedings that the obliged person is her family member, did not immediately report her bias and instead, took steps in the case that were not urgent and that were based on information obtained outside of the proceedings, thereby granting her family member enough time to pay the debt, has committed a disciplinary offence within the meaning of Section 87 (1) of Act No. 6/2002 Coll., on courts and judges.*

**Decision of the disciplinary board of the Supreme Administrative Court of 24**

**May 2017, ref. No. 16 Kss 1/2017-183:**

*The fact that there is a professional friendship between a judge and another person, in particular, another legal professional (typically, a public prosecutor, barrister or solicitor, notary, court enforcement officer, insolvency administrator) who is a procedural actor in the case deliberated on by the judge, cannot in and of itself be deemed to constitute a breach of the judge's obligation pursuant to Section 80 (1) sentence one and (2) (b) or (f) of Act No. 6/2002 Coll., on courts, judges, assessors, and state administration of courts.*

### **III. Professionalism**

Text of the Code of Ethics:

#### **III. Professionalism**

*(1) A public prosecutor shall perform the duties of his position at the highest professional level. To that end, he shall continuously educate himself and deepen his legal expertise.*

*(2) In performing the duties of his position, a public prosecutor shall proceed with initiative such as to expeditiously and reliably ascertain the actual state of the matter and, based on the result, make an appropriate decision or take an appropriate measure.*

Commentary on paragraph 1:

The exercise of the competences of public prosecution or another activity performed within the framework of the exercise of the duties of the position of a public prosecutor must be carried out at the highest professional standard and with the highest degree of thoroughness. A public prosecutor must possess knowledge of legal regulations, judicial case-law, and opinions of theorists. If a public prosecutor does not possess such expertise in dealing with a specific case, he must supplement it. He must be prepared to defend the steps taken and accept responsibility for them. In exercising his competences, he must always keep in mind that the measures taken by him are mere means to the fulfilment of the tasks of public prosecution. A public prosecutor must protect the information obtained in the course of the exercise of his competences.

Specifically, a public prosecutor must fulfil the requirement of maintaining and improving his professionalism both by independent study and by attending educational and training events, especially those organised by the Judicial Academy, individual public prosecutor's offices, or, for example, by the Czech Union of Public Prosecutors. A public prosecutor should attend, above all, training and educational events focused on his specialisation, as well as others if it is appropriate for his further professional and personal development. This should not be prevented by head public prosecutors – on the contrary, head public prosecutors should support this form of professional training (this applies accordingly also in relation to judicial trainees and other employees of the public prosecutor's office). Independent study cannot substitute attending educational events as it lacks for the aspect of personal sharing of experience. The purpose of the Code of Ethics is not to precisely define the system of initial and further training of public prosecutors, but at the same time, it must be noted that a public prosecutor who has not attended a training event for a number of years clearly does not take due care of keeping his professionalism up to par.

On the other hand, however, a public prosecutor should not raise undue demands with respect to training events; so-called "training tourism" must be rejected. The top priority is always ensuring the due operation of the public prosecutor's office.

An important part of independent training and education is following professional sources. An important source of general information as well as methodological advice is the extranet of the public prosecutor's office. A public prosecutor should regularly monitor the contents of the extranet of the public prosecutor's office.

Language training is undoubtedly a part of professional training. Public prosecutors must increasingly communicate with partners abroad in the course of the exercise of their competences and their ability to communicate directly clearly improves the efficiency of their work. Similarly, language skills are necessary for informal communication with foreign colleagues or for attending other activities with a cross-border dimension (specialised conferences, meetings, working groups, etc.).

If the conditions of the specific public prosecutor's office permit, further university education of public prosecutors should be supported.

It is beneficial for public prosecutors to take part in training other public prosecutors, legal trainees, and other employees of the public prosecutor's office. In the interest of friendly relations and in order to strive to improve the functioning of the public prosecutor's office, public prosecutors share experiences and best practices. Good-quality publishing work of public prosecutors should also be supported.

Commentary on paragraph 2:

Within the scope set out by the law and with the tools provided to him, a public prosecutor must always seek justice and be prepared to accept any finding of facts that might arise from the investigations conducted.

A public prosecutor may not needlessly transfer to other authorities, institutions, and other entities the exercise of those activities that he is authorised by law to perform himself. In criminal matters, he must not wait for a criminal complaint to be filed if he has specific and credible knowledge of a crime having been committed. Similarly, he must not wait for a submission to set aside a decision which he is authorised to set aside if it is clear to him that the decision concerned is unlawful. He should not needlessly permit criminal proceedings to run in cases when there is no legal foundation for doing so. In the course of the exercise of the competences of the public prosecutor's office, a public prosecutor should take note of all facts essential for evaluating the case.

If the findings available to a public prosecutor indicate that there is a statutory reason for exercising the competences of a public prosecutor or of the public prosecutor's office, a public prosecutor must proceed at his own initiative such as to ascertain the state of the matter expeditiously and reliably, and take appropriate measures on the basis of the outcome of such investigation.

This provision of the Code of Ethics ties into:

- Section 24 (3) of the Act on the Office of the Public Prosecutor, which stipulates that *"By continuous education and training, a public prosecutor shall strive to deepen his legal expertise as well as other knowledge required for the due performance of the duties of his office. To that end he shall use, in addition to independent study, in*

*particular training and educational events organised by the Judicial Academy or the public prosecutor's office or by universities";*

*- Section 24 (5) of the Act on the Office of the Public Prosecutor, which stipulates that "A public prosecutor shall make a contribution, through his expertise and abilities, to the professional training and education of public prosecutors, judges, legal and judicial trainees and other employees of the public prosecutor's office and of courts, organised by the Judicial Academy, the Ministry, public prosecutors' offices, or courts. If his obligations in the performance of the duties of his office permit, a public prosecutor may also contribute his knowledge to the professional training of barristers and solicitors and articling students."*

Overview of certain decisions and position statements:

Requirements for public prosecutors:

**Decision of the Supreme Court of 22 October 2001, file no. 11 Zp 29/2001:**

*The ability to make high-quality decisions is a fundamental prerequisite for exercising of the duties of the position of a public prosecutor.*

**Decision of the High Court in Olomouc of 1 December 2006, file no. 2 Ds 2/2006:**

*Exercise of the duties of the position of a public prosecutor requires not only a significant amount of expert abilities and theoretical knowledge, but also practical knowledge in this sphere and, in addition, also a significant moral repute, as the position of a public prosecutor generally enjoys great prestige in society.*

Unprofessional procedural steps:

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 3 April 1996, file no. 2 Spr 87/96:**

*A public prosecutor has committed a disciplinary offence if, in 28 criminal cases that he returns to the investigator pursuant to Section 174 (2) (d) of the Code of Criminal Proceedings, he fails to issue an instruction to the office to mark those steps in the relevant register, thereby failing to ensure an appropriate basis for drawing up reports of the District Office of the Public Prosecutor for the relevant month.*

**Decision of the High Court in Prague of 3 November 2008, file no. 3 Ds 20/2008:**

*A public prosecutor has committed a disciplinary offence by failing to take any measure to present a file to its subordinated authority required for a decision on a complaint, and does so in five cases over the period from one year and two months to more than two years.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 2 June 2014, file no. 12 Ksz 2/2014:**

*A public prosecutor has committed a disciplinary offence by failing to take note of a change in legal regulation and issuing a search order to a police authority with respect to other premises and land, even though such an order may only be issued by a judge in pre-trial proceedings, thereby causing the search of the other premises and land performed by the police authority to be illegal.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 16 June 2014, file no. 12 Ksz 3/2014:**

*A public prosecutor has committed a disciplinary offence by failing to appeal a judgement, to the detriment of the accused, with respect to the statement of punishment, whereby a clearly unduly low punishment was imposed on the accused..*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 21 June 2012, file no. 12 Ksz 7/2012:**

*A public prosecutor has committed an act that qualifies as a disciplinary offence of a public prosecutor pursuant to Section 24 (1) sentence one of the Act on the Office of the Public Prosecutor by culpably breaching, by extended delays, his obligation to present a resolution on the discontinuation of criminal prosecution to the Office of the Prosecutor General pursuant to Section 173a of the Code of Criminal Proceedings and general guideline No. 8/2009, issued pursuant to pursuant to Section 12 (1) of the Act on the Office of the Public Prosecutor, which stipulates that the obligation must be complied with within one week of the date on which the resolution took legal effect.*

**Decision of the High Court in Prague of 3 November 2008, file no. 3 Ds 22/2008:**

*A public prosecutor has committed a disciplinary offence by forging, in an attempt to conceal his error in handling a case, the contents of a supervisory file and a criminal file by taking out a resolution previously rendered by him, replacing it with one with different contents.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 21 June 2012, file no. 12 Ksz 5/2012:**

*A public prosecutor has breached an obligation pursuant to Section 24 (1) of the Act on the Office of the Public Prosecutor, consisting of the obligation to carry out the duties of his office impartially and professionally, if he takes it upon himself to handle a criminal complaint even through it is evident that he does not have material or territorial competence and the criminal complaint is aimed against him personally.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 9 February 2015, file no. 12 Ksz 11/2014:**

*A public prosecutor has committed a disciplinary offence by commissioning a translation of a police file excessively and without cause.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 27 August 1997, file no. 2 Spr 586/97:**

*A public prosecutor has committed a disciplinary offence by failing to forward, in custody criminal proceedings in which the district court returned the case to the public prosecutor for additional investigation, for a period of approximately 5 weeks, the case to the investigator with an instruction to supplement the investigation and does not take any other action without a serious reason.*

**Decision of the High Court in Olomouc of 10 October 2007, file no. 2 Ds 2/2007:**

*I. A public prosecutor has committed a disciplinary offence by leaving unattended, in a visible place in a passenger car, a briefcase with files of the public prosecutor's office, which contain personal data of the accused and of other persons.*

*II. Files of the public prosecutor's office may be removed from the workplace, there is nothing illegal about that and such is the common practice not only among public prosecutors, but also among judges and other traditional legal professions. Those files must, however, in that case be sufficiently secured against abuse.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 12 July 1995, file no. 2 Spr 336/95:**

*A public prosecutor has committed a disciplinary offence by leaving, as the head public prosecutor, during the relocation of the public prosecutor's office, documents labelled as "confidential" and "strictly confidential" in the safe at his original workplace, when, after the retirement of the safe and its transfer to the ownership of a natural person, that person finds the documents and burns them.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 27 April 2010, file no. 12 Ksz 1/2009:**

*The loss of a USB flash disk by a public prosecutor in a situation when a part of a criminal file was stored on the disk in electronic form, qualifies as a disciplinary offence pursuant to Section 28 of the Act on the Office of the Public Prosecutor.*

Delays in proceedings:

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 21 February 2001, file no. K 107/2000:**

*A public prosecutor has committed a disciplinary offence if he is inactive in extradition proceedings for a period of one month even though the Ministry of the Interior designated the case as very urgent.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 13 September 2012, file no. 12 Ksz 9/2012:**

*An action qualifies as a disciplinary offence of a public prosecutor if a public prosecutor, contrary to the principle of proceeding conscientiously and without needless delays pursuant to Section 24 (1) sentence one of the Act on the Office of the Public Prosecutor, was culpably inactive for an extended period of time and in spite of repeated initiatives from the filing person failed to review the steps taken by the police authority.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 23 May 2000, file no. K 102/2000:**

*A public prosecutor has committed a disciplinary offence by causing serious delays in criminal proceeding by failing to carry out, in exercising supervision over the legality of pre-trial proceedings, an inspection of the steps taken by the investigator in a criminal case, thereby not discovering fundamental defects in the criminal proceedings due to which the case was returned by the court to the public prosecutor for additional investigation after the indictment was filed.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 13 February 2002, file no. K 103/2001:**

*A public prosecutor has committed a disciplinary offence by being inactive in a number of cases, albeit due to his indecision.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 16 September 2010, file no. 12 Ksz 6/2009:**

*The inactivity of a public prosecutor during her standby duty in a situation when the police authority is requesting cooperation in prosecuting dangerous runaway offenders, gives rise to disciplinary liability for a disciplinary offence pursuant to Section 28 of the Act on the Office of the Public Prosecutor.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 29 June 2015, file no. 12 Ksz 4/2015:**

*A public prosecutor failed to perform active supervision in pre-trial proceedings and repeatedly, without checking the file, extended the deadline for the conclusion of verification, thereby not discovering delays on the part of the police authority.*

Errors in custody proceedings:

**Decision of the High Court in Olomouc of 27 March 2008, file no. 2 Ds 1/2008:**

*A public prosecutor has committed a disciplinary offence by neglecting, after the expiration of the longest permissible custody period, to release the accused from custody.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 15 November 2013, file no. 12 Ksz 4/2013:**

*A public prosecutor has committed a disciplinary offence by not paying due and increased attention to custody matters, thereby neglecting the longest permissible custody period and failing to release the accused from custody once it has expired.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 8 December 2014, file no. 12 Ksz 10/2014:**

*A public prosecutor has committed a disciplinary offence by failing to release the accused from detention or submitting to the court an application for remanding the accused in custody within 48 hours of having receive an request for the remanding of the accused in custody.*

Failure to comply with orders:

**Decision of the Supreme Court of 3 March 2009, file no. 2 Skno 3/2008:**

*A public prosecutor has committed a disciplinary offence by repeatedly intentionally not complying with lawfully issued orders of his head public prosecutor pertaining to specific legal cases.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 27 June 2001, file no. K 105/2001:**

*A public prosecutor has committed a disciplinary offence by refusing to carry out supervision in a criminal case assigned to him without having lawful grounds for doing so, and by refusing to comply with an instruction of a head public prosecutor to carry on in performing supervision without refusing to comply with that instruction due to the instruction being unlawful.*

Other:

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 15 September 2014, file no. 12 Ksz 8/2014:**

*A public prosecutor has committed a disciplinary offence by not reporting, without grounds and a timely apology, to a court hearing that has been ordered in a civil matter, even though he was informed about it in advance, and the court ruled, for that reason, by rendering a default judgement.*

#### ***IV. Trustworthiness***

Text of the Code of Ethics:

#### ***IV. Trustworthiness***

*(1) In performing the duties of his position as well as in his private life, a public prosecutor shall proceed such as not to call into question his own trustworthiness or the trustworthiness of the public prosecutor's office.*

*(2) In performing the duties of his position as well as in his private life, a public prosecutor shall show that adherence to legal regulations constitutes an important value for him.*

*(3) A public prosecutor shall not call his trustworthiness into question by referring to his position in matters unrelated to the exercise of the position of a public prosecutor. Furthermore, a public prosecutor shall not abuse for private purposes any of the information that comes to his attention during the exercise of his position.*

*(4) A public prosecutor shall not accept any financial or non-financial benefit or advantage (hereinafter referred to as "Gift") in connection with the exercise of the competences of the public prosecutor's office. A public prosecutor may accept a gift in connection with the exercise of his position, a protocolary gift, or a gift provided by his employer, but not a gift the acceptance of which would call into question his impartiality, independence, and trustworthiness but not a gift the acceptance of which would call into question his impartiality, independence, and trustworthiness.*

*(5) A public prosecutor shall consider the suitability of accepting a gift even in his personal life, in order to maintain the trustworthiness of his own and that of the office of the office of public prosecutor.*

Commentary on paragraph 1:

A public prosecutor is a public prosecutor 24 hours a day, 7 days a week. That is the commitment a public prosecutor accepts voluntarily upon his appointment. Hence, it is not merely about accepting the rights and benefits linked to the position of a public prosecutor, but also about accepting responsibility and certain restrictions applicable both in his professional and private lives. It also is about maintaining the public prosecutor's trustworthiness both at the workplace and when facing the public – public opinion. A public prosecutor builds his own trustworthiness as well as that of the office of the public prosecutor by adhering to the principles set out above at his workplace, particularly, as well as by dignified and honourable conduct in his private life.

Public prosecutors live regular lives, attending cultural, sports, and social events and functions, where they necessarily meet many other people. Even at such events, however, public prosecutors must evaluate the circle of people they meet while there (or whom they might meet, when considering attending a particular event). It is inappropriate for a public prosecutor to accept an invitation to an event where his

encounter with certain persons may give rise to the impression that the trustworthiness of the public prosecutor or of the public prosecutor's office is being compromised. The more restricted a circle of people attends such a function, the greater attention must be paid to it (naturally, there is no need to leave a theatre performance or football game where a potential meeting with for example the accused in a case supervised by the public prosecutor is only a matter of chance and can be compared to a random encounter in the street).

Generally, public prosecutors can freely profess a religion and freely practice their faith (there is no restriction here to merely state-approved churches and religious societies); they can also be members of various societies, foundations, and other formal or informal associations. That means that a public prosecutor may take part in religious ceremonies and other activities related to churches or linked to churches (e.g., the Three-Kings charity collection) in a standard manner, but it would be undignified for a public prosecutor to force his faith onto others in an activist manner. Similar rules apply to public prosecutors in the sphere of association. It can undoubtedly be considered an honour for a public prosecutor to be a member of a professional association (Czech Union of Public Prosecutors, Czech Lawyers' Union, Czech Criminological Society, etc.), provided that he duly performs both his obligations as a public prosecutor and those as a member of the association. Public prosecutors may freely take part in other association activities, e.g., scouting, hunting, or fishing associations, etc. Here, too, the general principle of restraint applies and a public prosecutor may not, by exercising his religious rights and his right of association, call into question the trustworthiness of his own or that of the public prosecutor's office. This must be evaluated not only when such activities are first taken up, but at any point in the future. A public prosecutor must not call his trustworthiness into question by taking part in political activities, in religious, or in other civic activities. Above all, he must in no way participate in the activities of undemocratic entities that profess opinions incompliant with fundamental principles of democratic rule of law. He must not link his interest to any such undemocratic entities.

A public prosecutor may also meet with his professional colleagues (judges, barrister and solicitors, notaries, or other lawyers). Many of them are friends from school or acquaintances made while working in the same profession for many years, etc. When those persons are, however, acting in the capacity of their official functions, it is unacceptable for them to show to the rest of the world that they have closer relations, e.g., by talking on a first-name basis. A public prosecutor must always make sure that he does not give rise to questions about bias.

In public space, a public prosecutor may state his opinions on public matters and engage in social debate. This engagement is, however, not unrestricted: he must make sure to exercise restraint, in particular on political issues. Here, we can refer to decisions of disciplinary courts in the cases described below, in file no. 13 Kss 1/2015, file no. 11 Kss 6/2015, and to the Constitutional Court judgement file no. I. ÚS 2617/15 of 5 September 2016 (and also file no. 16 Kss 7/2014).

As a lawyer, a public prosecutor may be approached by various people for legal advice (most frequently his family or friends). There are restrictions in this regard set in Section 24 (2) (e) and Section 24 (6) of the Act on the Office of the Public

Prosecutor, and the ethical dimension of such advice must be considered, as well. It seems contrary to the ethics of a public prosecutor to provide specific legal advice (including drafting submissions) to suspects and accused in criminal proceedings or to provide such advice to a greater extent (or even during working hours), and it is impermissible to provide such legal advice in exchange for a payment or another benefit that is not of a purely social nature.

The contemporary world and society offer diverse electronic means of communication and access to information. Public prosecutors may use social networks in their private lives but are advised to not stress on such social networks that they are public prosecutors. What is more important, however, is their presentation on social networks and on the Internet. A public prosecutor should use them with restraint – in this regard, it is necessary to refer to the explanation given above with respect to the general exercise of freedom of speech. Furthermore, a public prosecutor should exercise restraint in publishing (sharing) other materials (photos, videos) from his private life – the trustworthiness of the public prosecutor may be jeopardised even by these, if they can be perceived as undignified.

Commentary on paragraph 2:

A public prosecutor must adhere to laws – he should set an example for his fellow citizens by observing them. A public prosecutor's faith in the mission entrusted to him strengthens the confidence of the public in the office of the public prosecutor. A public prosecutor should therefore indicate, by how he carries out the duties of his office as well as by his private life, above all, that adherence to legal regulations is an important value for him. In this regard, a public prosecutor should not use (or, better, abuse) the society's tolerance to certain types of breaching the law (e.g., crossing the road on a red light, paying contractors "under the table", doing certain types of construction work without a building permit, etc.).

Commentary on paragraph 3:

Any abuse of position runs contrary to the honour of a public prosecutor. Such abuse includes, in particular, a public prosecutor receiving undue financial or other performances, requesting undue discounts or free services, attempting to avoid punishment for misdemeanours and administrative offences, attempting to obtain undue advantages from authorities in their deliberations on his private matters, using his workplace for private activities, using official symbols for private purposes, or otherwise attempting to use his position for the advancement of his personal interests.

The trustworthiness of a public prosecutor is also called into question by the abuse of the public prosecutor's office or its business relations for the benefit of his own or that of a third party.

A public prosecutor must not abuse his work tools for purely private purposes. For example the use of a work e-mail from the address of which (in conjunction with information publicly available on the Internet) the public prosecutor's name and the

public prosecutor's office at which he works can be determined, may be considered to constitute the obtaining of an undue benefit linked to his position.

Commentary on paragraph 4:

A public prosecutor must not, under any circumstances, accept a gift (any financial or non-financial benefit or another advantage) in connection with the exercise of the competences of the public prosecutor's office, i.e., in connection with him making or not making (or making in a particular form) a decision or another task performed within the scope of the competences of the public prosecutor's office.<sup>2</sup> Otherwise, such conduct would constitute a breach of ethics of a public prosecutor, it would also constitute corruptive conduct.

A gift provided to a public prosecutor in connection with the exercise of the duties of his position (that is, not a gift given to him in his private capacity) means for example small gifts given to participants (whether as lecturers or as passive attendees) at conferences (pen, notepad, USB flash disk, book, refreshments, etc.), various educational events or meetings, both departmental and outside of his department. Given that this is established practice, it is not necessary for a public prosecutor to refuse such gifts. At the same time, however, a public prosecutor must not call into question his impartiality and independence. In this context, the type and value of the gift must be considered. Equally as important are the circumstances under which the gift is being granted and the overall context of its provision. Acceptance of gifts in the form of jewellery must be assessed as unacceptable. With a view to the social-economic status of society, the value of such gifts should not normally exceed an amount of around CZK 1,000. The context must be evaluated in every situation – for example a bouquet of flowers given to a female public prosecutor at an official meeting, whose usual value is higher than the amount stated above, will be acceptable.

A public prosecutor should always discretely check the gifts he receives and if their value is higher, he should return them to the provider. This can be done directly or for example by leaving them at the venue.

A protocolary gift is any financial or non-financial benefit obtained in the course of an exchange of gifts with a foreign delegation, both domestically and abroad. In such cases, a fixed financial limit on the gift cannot quite be set, as the refusal to accept the gift may be interpreted as tactless and could insult the other party, thereby disrupting relations with foreign partners.

Similarly, a fixed value cannot be set on gifts provided by the employer. In these cases, however, it is necessary to respect the statutory restriction arising from Section 16 of Act No. 201/1997 Coll., on the pay and certain other particulars concerning public prosecutors and amending Act No. 143/1992 Coll., on pay and remuneration for being on call at organisations financed from the government budget and certain other organisations and bodies, as amended, which stipulates that: *“As of the effective date of this act, a public prosecutor shall be entitled to a salary, further pay, and other particulars solely pursuant to this Act. As of this day, a public*

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<sup>2</sup> See also Section 303 (2) (c) of the Labour Code

*prosecutor shall not be entitled to any other financial or non-financial performances in connection with the exercise of the duties of his position within an employment relationship, with the exception of travel expense reimbursements pursuant to a special regulation.”*

In all of the cases referred to above, however, a gift must be refused if its acceptance may call into question the impartiality, independence, and trustworthiness of a public prosecutor or the trustworthiness of the public prosecutor’s office (e.g., a bottle of wine as a Christmas present for a public prosecutor from a law firm with whose lawyers the public prosecutor meets in the course of criminal proceedings).

The conditions for accepting gifts should be observed by public prosecutor in providing gifts to other persons.

Commentary on paragraph 5:

This provision emphasises the principle of restraint for public prosecutors even in connection with the acceptance of gifts by a public prosecutor in his private life. As these comments have stressed on several occasions, a public prosecutor is a public prosecutor at all times.

This provision of the Code of Ethics ties into:

- Section 24 (2) of the Act on the Office of the Public Prosecutor: *“In exercising the duties of his position, in his private life, as well as in the exercise of his political rights, a public prosecutor shall refrain from anything that may give rise to reasonable doubts as to his adherence to the obligations set out in paragraph 1, jeopardise the seriousness of the position of public prosecutor or the seriousness of public prosecution or jeopardise confidence in impartial and professional exercise of the duties of state prosecution or a state prosecutor”;*
- Section 24 (4) of the Act on the Office of the Public Prosecutor: *“A public prosecutor shall hold in due esteem other public prosecutors, other persons practicing the legal profession, other employees of the public prosecutor’s office, and other persons with whom he deals in exercising the duties of his position; in particular, he shall refrain from undue public criticism of the public prosecutor’s office and the exercise of its competences, of other public prosecutors, judges, barristers and solicitors, and notaries.”*

Overview of certain decisions and position statements:

**Judgement of the Supreme Administrative Court of 20 May 2015, ref. no. 13 Kss 1/2015 – 112:**

*A judge has the right to express and disseminate, even publicly, his civic and political attitudes, including opinions that are openly critical, but he is obliged to exercise this right to freedom of speech, as set out primarily in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (No. 209/1992 Coll.) and Article 17 of the Charter of Fundamental Rights and freedoms, with a certain restrain, that is, such as to not jeopardise confidence in the independent, impartial, and fair decision-making of courts and as to not give rise to a reduction in confidence for the judicial system and not compromise the dignity or due exercise of the judicial function*

*[Section 80 (1), (2) (b) and (4) of Act No. 6/2002 Coll., on courts, judges, assessors, and state administration of courts]. A culpable breach of this obligation by a judge may qualify as a disciplinary offence under Section 87 (1) of the same act.*

**Judgement of the Supreme Administrative Court of 6 June 2016, ref. no. 11 Kss 6/2015 – 53:**

*I. It can be inferred from Section 80 of Act No. 6/2002 Coll., on courts, judges, assessors, and state administration of courts, that judges are, unlike other categories of persons, partially restricted in their freedom of speech; this restriction corresponds to the measures listed in Article 17 (4) Of the Charter of Fundamental Rights and Freedoms and Article 10 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (No. 209/1992 Coll.).*

*II. A judge has the right to express his opinion publicly, even on issues that may be viewed as political and contentious. In exercising his right to freedom of speech, however, a judge must not express direct support to a specific political entity or agenda and endorse or disseminate ideas that run contrary to the principles of a democratic society. In general, his actions must be controlled by his awareness of the line beyond which he might give rise to the impression that the opinions presented by him could have an impact on the exercise of the duties of his position, as a judge. In the course of a public exchange of political or other opinions concerning issues from public life, he must not, above all, cause the public to believe that his opinion is the official opinion of the office he holds, and the manner whereby he presents his opinions must not compromise the dignity of the judicial function.*

**Judgement of the Constitutional Court file no. I. ÚS 2617/15 of 5 September 2016 (N 162/82 SbNU 539):**

*To maintain public confidence in the judiciary, it is necessary for judges to keep distance from political competition in their appearances, on any level, including locally. Judges must not take part in campaigns of political parties, political movements, or election groupings or of specific politicians, or influence the form of future coalitions by their post-election opinions.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 29 September 2009, file no. 12 Ksz 2/2008:**

*A public prosecutor provides to the media (the press) information about his personal relations in the past – which he himself declares to be, in the eyes of the public that assesses the trustworthiness of the public prosecutor – undoubtedly alarming or even shocking, and in giving reasons for wishing to continue to hold his position, he declares that he is driven by purely material motivations.*

**Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of April 2011:**

*The Ethical Committee of the Union of Public Prosecutors concluded that JUDr. M. P. breached point 9 of the Moral Code for Public Prosecutors as well as Section 24 (2) of the Act on the Office of the Public Prosecutor, when, as she states, she and her husband entered into an advantageous loan agreement with a creditor of whom she knew that he had been, not long before entering into that relationship of obligation, investigated as a suspect in criminal proceedings which were supervised by a public prosecutor from the District Office of the Public Prosecutor in Prachatice, of which*

she was the head at that time. In line with Section 24 (2) of the Act on the Office of the Public Prosecutor JUDr. M. P. should have duly accented that fact in her private life, and by no means enter into advantageous relationships of obligation with such a person as such actions undoubtedly jeopardised, in the eyes of the public, confidence in impartial exercise of the competences of state prosecution.

Furthermore, the Ethical Committee agreed that JUDr. M. P.'s appearance before the journalist Janek Kroupa on 1 April 2011 was not in line with point 6 Of the Moral Code for Public Prosecutors, as it was not dignified. The Ethical Committee, however, considers the undignified contents of that media appearance to be a significantly less serious error in ethical terms than was the case in the conclusion of the above-mentioned loan agreement.

#### **Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of May 2015:**

Participation of public prosecutors and legal trainees from the public prosecutor's office in television contests and leisure-time programming is not, according to the Ethical Committee, in violation of the rules of professional Ethics of Public prosecutors or of Section 24 of the Act on the Office of the Public Prosecutor. The Ethical Committee does, however, urge all public prosecutors as well as legal trainees at the public prosecutor's office to always consider, responsibly and thoroughly, whether by taking part in activities to which public appearances and speeches are linked, do not threaten to reduce the seriousness, trustworthiness, and prestige of the profession of public prosecutors. It is desirable for both public prosecutors and legal trainees at the public prosecutor's office to always keep in mind in engaging in such activities the need of maintaining a certain level of temperance and restraint and to resist any personal exhibitionism. That rule must be adhered to not only as concerns appearances themselves, but also as concerns the type of activity he intends to attend. At the same time, it is necessary to consider and evaluate the make-up of other persons who will participate or cooperate in the given activity.

#### **Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 27 August 1997, file no. 2 Spr 523/97:**

Concerning unauthorised use of the title "JUDr.".

#### **Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of November 2012:**

According to the Ethical Committee, public prosecutors' membership in Rotary clubs does not violate the rules of professional Ethics of Public prosecutors or the text of Section 24 of the Act on the Office of the Public Prosecutor. The Ethical Committee does, however, urge all public prosecutors to always consider, responsibly and thoroughly, both their involvement in various associations and clubs and their public presentations related to membership therein, not only from the point of view of applicable legislation, but also with a view to the rules of professional ethics related to their position. In the case of active participation and public appearances related to membership in such associations, the Ethical Committee recommends a certain level of temperance and moderation as it must always be kept in mind that the impartiality, fairness, and the related trustworthiness and prestige of our profession are extremely valuable categories that the entire public prosecution system must affirm in the eyes of the public, and never let it decline.

**Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of October 2010:**

*By expressing, in an open letter addressed to the Minister of Justice of the Czech Republic, her concerns about the discussion of the potential future employment of JUDr. Renata Vesecká following her recall from the position of the Prosecutor General of the Czech Republic, given the non-standard situation in which the public prosecutor's office has been for a considerable period of time, Mgr. V. N. did not act in violation of Section 24 (4) of the Act on the Office of the Public Prosecutor, but rather, only exercised her right to freedom of speech guaranteed by Article 17 (1) of the Charter of Fundamental Rights and Freedoms and proceeded in line with Articles 7 and 8 of the Moral Code for Public Prosecutors, which was adopted by a Meeting of Representatives of sections of the Union of Public Prosecutors held on 6 and 7 April 1999 in Prague, and reconfirmed by on 8 and 9 April 2005 at an annual Meeting of Representatives of sections of the Union of Public Prosecutors held in Znojmo.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 14 July 1999, file no. K 112/98:**

*A public prosecutor has committed a disciplinary offence by taking part, as a member of the jury, in an event during which girls compete in various categories and skills, including striptease, even though he knows that the girl chosen by the jury will be auctioned at the end of the event and that the winner of the auction may wash her naked body with champagne.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 19 July 2002, file no. K 108/2001:**

*A public prosecutor has committed a disciplinary offence when, in an attempt to influence the course of resolution of a traffic accident which he caused, he starts to declare to the attending police officers that he is a public prosecutor, showing his service card of a public prosecutor.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 14 July 1999, file no. K 112/98:**

*A public prosecutor has committed a disciplinary offence if he, in connection with a case he is supervising, without a real cause refers in the media to statements made by defence lawyers in the case as something that falls into the sphere of organised crime.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 4 February 1999, file no. K 103/98:**

*I. A public prosecutor has committed a disciplinary offence by repeatedly over an extended period of time, he comes to his office late, by 30 minutes to 2.5 hours, without a due apology and a statement of reasons, and in one case, not coming to work at all during his working hours without an apology and good cause.*  
*II. Occasional late arrivals at the workplace, even though unexcused, with the delay being from 15 to 30 minutes, cannot, in principle, amount to a sufficiently high level of harmfulness if the public prosecutor otherwise fulfils the tasks assigned to him.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 1 November 2013, file no. 12 Ksz 2/2013:**  
*A failure to report and document obstacles to work by a public prosecutor to his employer in the case of the public prosecutor's absence from work.*

## **V. Dignity and conduct**

Text of the Code of Ethics:

### ***V. Dignity and conduct***

*(1) A public prosecutor shall behave and conduct himself politely and decently.*

*(2) In his conduct, a public prosecutor shall take care to maintain the confidentiality statutorily prescribed for public prosecutors.*

*(3) A public prosecutor shall, in performing the duties of his position, take care to be presentable and dressed in manner appropriate to the position's importance.*

*(4) A public prosecutor shall adhere to principles of politeness and decency in his private life, as well.*

Commentary on paragraphs 1 a 4:

As stated above, a public prosecutor is a public prosecutor twenty-four hours a day, seven days a week. He cannot rely on the anonymousness of large cities or a foreign environment. The fact that a person is a public prosecutor is generally known (not only among those public prosecutors who are well-known in the media), it is known not only at the place where he works, but also at the place where he lives, among his relatives, friends, and acquaintances; this general awareness must then be assumed and a public prosecutor must understand it. With that in mind, he must adhere to rules for maintaining dignity and rules of decent conduct not only during his standard working hours, but at all other times, as well. As stated in the introduction to these comments, there is a certain overlap between ethical rules and general rules of decent conduct. Decent conduct should be something natural to a public prosecutor and anything different is an excess (let us point, in particular, to disciplinary case-law concerning alcohol consumption).

A public prosecutor must behave decently in relations with his colleagues, the representatives of other authorities, parties to proceedings, and all other persons with whom he comes into contact through work. He must behave decently and correctly even towards his colleagues who hold opposite opinions, to public prosecutors subordinated to him, as well as to other employees, police officers whose work he supervises, and to persons accused of a criminal offence. He must always keep in mind that decent conduct and matter-of-fact, peaceful argumentation strengthens not only his authority, but also that of the entire public prosecution system. In particular, it is necessary to keep good relations between superior and subordinated public prosecutors and develop them to create a productive and pleasant work environment. Even if certain personal animosities arise among those people, a professional approach in mutual communication and a cooperative spirit must always be maintained.

A public prosecutor, is, however, also a private person, like anyone else. He has his private life and interests and hobbies outside of work. Hence, it is evident that his behaviour and conduct will depend on the particular situation at hand, and he must adapt to that situation. Different standards as to conduct (but also, for example, attire) will apply when he is appearing in court and when he goes fishing, for instance. Regardless of the environment, situation, or presence of other persons, the fundamental principle of polite and decent behaviour must be observed.

It is important that public prosecutors understand that not only their own judgement (idea) of what conduct is appropriate in a given situation matters, but also the perception of his conduct by others (from the outside), as it forms the image of that particular public prosecutor as well as of public prosecution as a whole; that, too, must be taken into account by public prosecutors.

Commentary on paragraph 2:

Maintaining confidentiality is an important obligation of public prosecutors which arises directly from Section 25 of the Act on the Office of the Public Prosecutor. A consultation with colleagues cannot be seen as a breach of confidentiality. Public prosecutors are humans, like everyone else, and everyone needs advice at some point. Public prosecutors' offices cannot be offices where people do not talk or are afraid to talk to each other. Advice or assistance from a colleague is welcome; naturally, confidentiality will extend to these other colleagues in these cases.

Commentary on paragraph 3:

The purpose of these comments is not to set out specific and detailed rules for decent attire and presentable appearance of public prosecutors. It is, however, certain that it is absolutely unacceptable to attend a court hearing in short trousers (even in summer) or conduct a meeting at a public prosecutor's office in house shoes.

This provision of the Code of Ethics ties into:

- Section 24 (2) of the Act on the Office of the Public Prosecutor: *"In exercising the duties of his position, in his private life, as well as in the exercise of his political rights, a public prosecutor shall refrain from anything that may give rise to reasonable doubts as to his adherence to the obligations set out in paragraph 1, jeopardise the seriousness of the position of public prosecutor or the seriousness of public prosecution or jeopardise confidence in impartial and professional exercise of the duties of state prosecution or a state prosecutor"*;

- Section 24 (4) of the Act on the Office of the Public Prosecutor: *"A public prosecutor shall hold in due esteem other public prosecutors, other persons practicing the legal profession, other employees of the public prosecutor's office, and other persons with whom he deals in exercising the duties of his position; in particular, he shall refrain from undue public criticism of the public prosecutor's office and the exercise of its competences, of other public prosecutors, judges, barristers and solicitors, and notaries"*;

- Section 25 (1) of the Act on the Office of the Public Prosecutor: “A public prosecutor shall keep confidential matters that come to his attention in connection with the exercise of the duties of his position, including after he no longer exercises the duties of the position of a public prosecutor.”

Overview of certain decisions and position statements:

**Decision of the High Court in Olomouc of 3 May 2007, file no. 2 Ds 3/2006:**

*A public prosecutor has committed a disciplinary offence if he treats head public prosecutor disrespectfully.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 5 March 2013, file no. 12 Ksz 13/2012:**

*Actions at a workplace, consisting of disrespectful verbal and physical treatment of a female colleague – public prosecutor who found it unwelcome and inappropriate, constitutes a breach of the obligation of a public prosecutor set out in Section 24 (2) of the Act on the Office of the Public Prosecutor, to refrain from anything that may jeopardise the seriousness of the position of a public prosecutor, and pursuant to Section 24 (4) of the Act, to hold other public prosecutors in due esteem.*

**Decision of the disciplinary tribunal of the public prosecutor’s office at the Office of the Prosecutor General of 31 May 1999, file no. K 101/99:**

*A public prosecutor must, by no means, treat coarsely any complainant, essentially regardless of how the complainant himself is behaving. Even in the case of noisy or otherwise inappropriate conduct of a complainant, a public prosecutor must act politely, and if a certain position or measure must be insisted upon, a public prosecutor must execute it decisively, but calmly, politely, and correctly, having full respect for the submitter.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 18 July 2011, file no. 12 Ksz 1/2011:**

*Grossly indecent conduct of a public prosecutor in public, accompanied by aggressiveness and insults of municipal police officers and officers of the Police of the Czech Republic dealing with the consequences of that gross indecency, constitute grounds for imposing the most severe disciplinary measure – recall from position.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 5 March 2013, file no. 12 Ksz 13/2012:**

*Being under the influence of alcohol at the workplace runs contrary to the obligations arising from Section 106 (4) of the 2006 Labour Code and it also compromises and jeopardises the seriousness of the position of a public prosecutor pursuant to Section 24 (2) of the Act on the Office of the Public Prosecutor).*

**Decision of the disciplinary tribunal of the public prosecutor’s office at the Office of the Prosecutor General of 12 February 1998, file no. K 104/98:**

*A public prosecutor has committed a disciplinary offence by consuming alcohol at the workplace in a volume that is greater than small.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 23 September 1998, file no. K 107/98:**

*A public prosecutor has committed a disciplinary offence by repeatedly coming to his workplace inebriated or having withdrawal symptoms, and by acting, in that state, as the public prosecutor during trial or during a public session, when his drunkenness or withdrawal symptoms are clearly evident.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 14 December 1994, file no. 2 Spr 754/94:**

*A public prosecutor has committed a disciplinary offence by arriving at a meeting of judges and public prosecutors with the Minister of Justice (i.e., outside of his workplace) in the state of inebriation and there disrupts the agenda of the meeting by his drunkenness.*

**Decision of the disciplinary tribunal of the public prosecutor's office at the Office of the Prosecutor General of 5 April 1995, file no. 2 Spr 541/94:**

*A public prosecutor has committed a disciplinary offence by, following approved departure from his workplace, returning to his workplace in a seriously inebriated condition.*

**Decision of the Supreme Court of 29 August 2006, file no. 2 Skno 1/2006:**

*By attending a court hearing evidently inebriated, a public prosecutor harms public confidence for the office of public prosecutor.*

**Decision of the Supreme Administrative Court acting in the capacity of a disciplinary court of 14 June 2011, file no. 12 Ksz 6/2010:**

*Refusal to undergo a breath test for alcohol by a public prosecutor who, several tens of minutes before fell on the stairs in the lobby of her workplace, manifesting signs of difficulty of coordination and slow speech, with the presence of the odour of a strongly aromatic substance, constitutes a breach of obligations set by the 2006 Labour Code and the Act on the Office of the Public Prosecutor, and hence, also constitutes a disciplinary offence (Section 28 of the Act on the Office of the Public Prosecutor).*

**Decision of the Supreme Administrative Court as the disciplinary court of 2 June 2014, file no. 12 Ksz 6/2013:**

*A public prosecutor has committed a disciplinary offence when, at a time he was ordered to be on call (available to report for work), he brings himself, by abusing alcohol and medication, into a condition that precludes the exercise of the duties of the position of a public prosecutor.*

**Decision of the Supreme Court of the Czech Republic of 20 July 2009, file no. 2 Skno 1/2002 – freedom of speech:**

*Public prosecutors do not commit a disciplinary offence by discussing specific cases, stating their positions and opinions of specific cases in mutual non-binding discussions.*

## **VI. Cooperation**

Text of the Code of Ethics:

### **VI. Cooperation**

*In the interest of justice and protection of public interests, public prosecutors shall, in carrying out their duties, cooperate, depending on the circumstances of a particular case and in line with legal regulations, both with one another and with other law-assessing authorities, including those abroad.*

At the public prosecutor's office, a public prosecutor must not act on the basis of his sympathies or antipathies; he must strive to help all his colleagues in their work in order that they may achieve their shared objective – fulfilling the tasks of the public prosecutor's office – as effortlessly as possible. A public prosecutor must approach with the same degree of diligence cooperation with other law-enforcement authorities outside of public prosecution or even outside of the Czech Republic. Incompatible with the principle of cooperation are, in particular, slander, intrigues, withholding of important information, favouring of friends, transferring of responsibility to others, and appropriating someone else's merit.

It is impermissible to attempt, under the guise of cooperation, to directly or indirectly influence another public prosecutor in the performance of his duties.

Usually, independent exercise of the duties of the position of a public prosecutor is not prejudiced by cooperation with other public authorities, while respecting each other's position and competences. Similarly, there is no need to avoid cooperating with non-profit organisations (associations, foundations, churches, etc.), if their activity concerns the exercise of the competences of the public prosecutor's office, e.g., working with convicts, with crime victims, etc.

Cooperation with other bodies may take on the form of a public prosecutor's participation in the bodies, in particular advisory bodies, specified in Section 24 (6) of the Act on the Office of the Public Prosecutor. If a public prosecutor takes part in their work, his involvement must be professional, active, and must represent the interests of the public prosecution system.

As a voluntary professional non-political association of public prosecutors, legal trainees, and assistant public prosecutors, the Czech Union of Public Prosecutors enjoys a special position. Act on the Office of the Public Prosecutor itself, in the provisions of Section 13j, presumes tighter cooperation with an interest organisation of public prosecutors. Competent administrative bodies of the public prosecutor's office should pursue and support this form of cooperation. Memberships and activities of public prosecutors, legal trainees, and assistant public prosecutors in the Czech Union of Public Prosecutors should be supported.

This provision of the Code of Ethics ties into:

- Section 12g a Section 12h of the Act on the Office of the Public Prosecutor;

- Section 13j of the Act on the Office of the Public Prosecutor, which stipulates that *“In exercising their competences, administrative bodies of the public prosecutor’s office shall cooperate with interest organisations of public prosecutors, discussing with them in particular the following:*

*a) Draft legislation that is significantly related to the competences of the public prosecutor’s office and the method of its exercise;*

*b) Fundamental measures pertaining to the organisation of the public prosecutor’s office, position of public prosecutors, and administration of the public prosecutor’s office”;*

- Section 24 (6) of the Act on the Office of the Public Prosecutor, which stipulates that *“As of the date determined as the date as at which he shall assume his office and until such time as he leaves the position of public prosecutor, a public prosecutor must not, aside from the exercise of the duties of the position of a public prosecutor and of the position of head public prosecutor or his deputy, or activities related to a temporary assignment at the Ministry or the Judicial Academy, hold any other paid position or perform any other gainful activity, with the exception of the management of his own assets and of scientific, pedagogical, literary, publication, or artistic work, work in advisory bodies of the Ministry, the government, and in the bodies of the houses of the Parliament, and of activities in the Independent Control Body of intelligence services of the Czech Republic pursuant to the Act on Intelligence Services of the Czech Republic, provided that those activities are compatible with the requirements of the due exercise of the duties of the position of a public prosecutor.”*

Overview of certain decisions and position statements:

**Decision of the Supreme Court of the Czech Republic of 20 July 2009, file no. 2 Skno 1/2002 – freedom of speech:**

*Public prosecutors do not commit a disciplinary offence by discussing specific cases, stating their positions and opinions of specific cases in mutual non-binding discussions.*

**Decision of the Supreme Administrative Court of 16 June 2016, ref. No. 16 Kss 1/2016-55:**

*A judge interested in the development of a case handled by a different judge because her daughter has a relationship with a party to those proceedings has committed a breach of a judge’s obligation consisting of indirectly influencing a case even though she did not express any wish as to the final outcome of the decision. Such conduct is the more impermissible in a situation when the judge is the chair of the court, who, as the superior of the judge handling the case, inquires about the development of the case and informs the judge handling the case about the fact that the party to the proceedings has a relationship with her daughter right before a decision is made and announced (Section 87 (1) of Act No. 6/2002 Coll., on courts, judges, assessors, and state administration of courts).*

**Ethical Committee of the Union of Public Prosecutors of the Czech Republic - position statement of November 2012:**

*According to the Ethical Committee, public prosecutors’ membership in Rotary clubs does not violate the rules of professional Ethics of Public prosecutors or the text of Section 24 of the Act on the Office of the Public Prosecutor. The Ethical Committee does, however, urge all public prosecutors to always consider, responsibly and*

thoroughly, both their involvement in various associations and clubs and their public presentations related to membership therein, not only from the point of view of applicable legislation, but also with a view to the rules of professional ethics related to their position. In the case of active participation and public appearances related to membership in such associations, the Ethical Committee recommends a certain level of temperance and moderation as it must always be kept in mind that the impartiality, fairness, and the related trustworthiness and prestige of our profession are extremely valuable categories that the entire public prosecution system must affirm in the eyes of the public, and never let it decline.

## ***Appendix: Code of Ethics of Public Prosecutors***

# **Code of Ethics of Public Prosecutors**

### **I. Legality and Independence**

Public prosecutors shall exercise the competences of the Public Prosecutor's Office thoroughly in accordance with the law and their conscience, independent of other bodies and of local, political, private, or other influences and interests.

### **II. Impartiality**

Public prosecutors shall refrain from granting any undue advantage or disadvantage to any person in the exercise of the duties of his position. They shall refrain from any activity that may as much as give rise to questions regarding their impartiality.

### **III. Professionalism**

(1) Public Prosecutors shall perform the duties of their position at the highest professional level. To that end, they shall continuously educate themselves and deepen their legal expertise.

(2) When performing the duties of their position, public prosecutors shall proceed with initiative so as to expeditiously and reliably ascertain the actual state of the matter at hand and, based on the result, make an appropriate decision or adopt an appropriate measure.

### **IV. Trustworthiness**

(1) When performing the duties of their position as well as in their private life, public prosecutors shall conduct themselves so as not to call into question their own trustworthiness or the trustworthiness of the public prosecutor's office.

(2) In performing the duties of their position as well as in their private life, public prosecutors shall show that adherence to legal regulations constitutes an important value for them.

(3) Public prosecutors shall not call their trustworthiness into question by referring to their position in matters unrelated to the exercise of the function of a public prosecutor. Furthermore, public prosecutors shall not abuse any of the information that comes to their attention during the exercise of their function for private purposes.

(4) Public prosecutors shall not accept any financial or non-financial benefit or advantage (hereinafter referred to as "gift") in connection with the exercise of the competences of the public prosecutor's office. Public prosecutors may accept a gift in

connection with the exercise of their function, a protocolary gift, or a gift provided by their employer, but not a gift the acceptance of which would call into question their impartiality, independence, and trustworthiness.

(5) Public prosecutors shall consider the suitability of accepting a gift also in their personal life, in order to maintain the trustworthiness of their own and that of the public prosecutor's office.

## **V. Dignity and Conduct**

(1) Public prosecutors shall behave and conduct themselves politely and decently.

(2) In their conduct, public prosecutors shall take care to maintain the confidentiality statutorily prescribed for public prosecutors.

(3) Public prosecutors shall, in performing the duties of their position, take care to be presentable and dressed in manner appropriate to the position's importance.

(4) Public prosecutors shall adhere to principles of politeness and decency in their private life as well.

## **VI. Cooperation**

In the interest of justice and protection of public interest, public prosecutors shall, when carrying out their duties, cooperate, depending on the circumstances of a particular case and in line with legal regulations, both with one another and with other law enforcement authorities, including foreign authorities.

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