

Right to review decision not to prosecute



Edinburgh, 30th May 2013

Bílý kruh bezpečí, Czech Republic

Vlasta Langhamerová

Program

- ⦿ criminal proceedings
- ⦿ decision of the public prosecutor not to prosecute
- ⦿ decision of the judge to terminate the case
- ⦿ new act of law on crime victims

Criminal proceedings

◎ two phases:

- ⇒ preliminary hearing (investigation, decision of the prosecutor)
- ⇒ proceedings before the court (decision of the judge)

Preliminary hearing

⦿ the end of the investigation = decision of the public prosecutor

⇒ decision to prosecute

⇒ other decision:

1. refer the case to a different authority to make the decision
2. discontinue the case
3. not to prosecute

Decision not to prosecute

◎ obligatory decision:

- ⇒ it is virtually certain that the act for which the criminal prosecution is pending never occurred,
- ⇒ the act is not a criminal offence and there is no reason to refer the case,
- ⇒ it is not proven that the act was committed by the accused,
- ⇒ the criminal prosecution is inadmissible ([Section 11 Subsection 1](#)),
- ⇒ the accused was not criminally liable due to insanity at the time of the act, or
- ⇒ the culpability of the act expired.

Decision not to prosecute

◎ facultative decision:

- ⇒ possible punishment is irrelevant next to the punishment which was already imposed,
- ⇒ the act of the accused has already been decided by another authority, and this decision can be regarded as sufficient, or
- ⇒ the purpose of criminal proceedings has been reached.

- 
- ⦿ belongs to the aggrieved person, if known
 - ⦿ right to file a complaint against the decision of the public prosecutor in 3 days of the notification of the decision
 - ⦿ review by the superior public prosecutor

◎ superior public prosecutor

⇒ upholds the decision

⇒ revokes the decision and order the public prosecutor, against whose decision the complaint is lodged, to make a new decision
(*obligation to follow the directions given by the superior prosecutor*)

Proceedings before the court

- ⦿ if the court terminates the case
 - ⇒ no right of the aggrieved person to file a complaint
- ⦿ in the proceedings before the court the aggrieved person is not a party to the criminal proceedings – the Criminal procedure code states that the purpose of the criminal proceedings is to identify properly criminal acts and to punish their offenders fairly in accordance with the law

Changes in legislation

- ⦿ new act of law on victims of crimes was signed on 11th February 2013 by president
- ⦿ comes into force from 1st August 2013

- 
- ⇒ new principles of the criminal proceedings are being declared in the act
 - ⇒ more respect to the needs of the victims, particularly to satisfy valid claims of the victims, duty of the state bodies to inform victims on their rights

⇒ **victim**

= 1. a person to whom the criminal offence caused bodily harm, damage or non-material damage or at the expense of whom the offender enriched himself/herself through a criminal offence

= 2. in case the direct victim of the crime dies => defined relatives in the direct line of decent, siblings, partners, husband/wife, in case they are close relatives

⇒ **particularly vulnerable victim** = children, disabled victims, victims of specific crimes (crimes involving violence, sexual crimes, etc.) that are more likely to be secondarily victimised

Rights declared by the law

- ⇒ 1. right to get a qualified help and support
- ⇒ 2. right to receive information
- ⇒ 3. right to be protected from imminent danger
- ⇒ 4. right to protection of privacy
- ⇒ 5. right to financial support

Precaution under Code of Criminal Proceedings

- ⇒ can be imposed on the accused by the judge
- ⇒ in cases, where:
 - ⇒ there exists reasonable fear based on particular circumstances
 - ⇒ that the accused may repeat particular criminal offence or may continue in committing crimes and
 - ⇒ all known facts so far indicate that the suspicion is reasonable
- ⇒ lasts until it is effective or until the criminal proceedings are finished

- 
- ⇒ the contact with the victim or witnesses may be forbidden,
 - ⇒ the visit of non-suitable places such as pubs, clubs, etc. may be forbidden,
 - ⇒ travel ban, prohibition of alcohol or drugs, prohibition to enter common living may be imposed

**Thank you for your
attention.**



**BÍLÝ
KRUH
BEZPEČÍ**



www.bkb.cz