



DISCIPLINARY COURT





PROCEEDINGS ON DISCIPLINARY ACTIONS AGAINST JUDGES, STATE PROSECUTORS AND ENFORCEMENT AGENTS

Since 1 October 2008 the SAC has become a **disciplinary court for judges and state prosecutors** under Act No. 314/2008 Coll., which fundamentally amended the Act on Courts and Judges (No. 6/2002 Coll.) and the Act on Proceedings in Matters of Judges and State Prosecutors (No. 7/2002 Coll.).

The disciplinary court hears cases and decides in 6-member chambers. They are composed of a presiding judge of the chamber, vice-presiding judge, a judge and three associate judges. In matters concerning judges of ordinary courts, the presiding judge of the chamber is a judge of the SAC, the vice-presiding judge is a judge of the Supreme Court and the third judge is a judge of the high, regional or district court. In matters concerning judges in administrative courts, the presiding judge of the chamber is a judge of the Supreme Court and the vice-presiding judge a judge of the SAC. At least one state prosecutor, one attorney at law and a person exercising another legal profession must be represented among the associate judges. In matters concerning state prosecutors the chambers are composed of a presiding judge of the chamber (judge of the SAC), vice-presiding judge (judge of the Supreme Court) and four associate judges. Two associate judges have to be state prosecutors, one has to be an attorney at law and one has to exercise a different legal profession.

The disciplinary proceedings may be commenced upon petition and is decided in one instance, the only remedy admissible being a new trial. Oral hearings are public. The procedure is governed, unless otherwise specified, by Criminal Code. In October 2009 the SAC submitted a petition to the Constitutional Court proposing it to consider the constitutionality of the fact that the procedure takes place in one instance in matters of judges.³²⁹ The disciplinary chamber

³²⁹ Decision of 19 August 2009, no. 11 Kss 4/2009-89; the matter is registered at the Constitutional Court under No. Pl. ÚS 33/09.

of the SAC considers that the right to a fair trial does not in itself entail a right to the proceedings in two or more instances. It is, however, disputable whether the right to a fair trial in the disciplinary procedure is not compromised, bearing in mind that a procedure on issues of serious nature such as disciplinary offences of judges and imposing disciplinary measures in only one instance is unique in the Czech legal framework and no objective reasons were submitted to justify this exception.

Pursuant to Act No. 183/2009 Coll. (amendment to the Enforcement Code) the SAC has also become a **disciplinary court for enforcement agents** since 26 June 2009. Disciplinary chambers that deal with disciplinary matters of judges are supposed to also deal with these disciplinary matters. Pursuant to the transitional provisions of the Act, the SAC should also decide the cases not resolved by 26 June 2009 by the Disciplinary Committee (a dissolved body of the Enforcement Agents Chamber) as well as cases in which the committee had taken a decision but failed to produce a written decision and to send it to the agent charged with a disciplinary offence. In December 2009 a chamber of the disciplinary court of the SAC submitted a petition to the Constitutional Court to consider the constitutionality of the transitional provisions of Act No. 183/2009 Coll. (see above), as it took the view that it may violate the right to a fair trial, namely the right of parties to the procedure to legitimate expectations that the principle of non-retroactivity shall be observed.³³⁰

Shortly after this amendment, the regulation of the disciplinary procedure in matters of enforcement agents changed again and pursuant to Act No. 286/2009 Coll. (amendment to the Enforcement Code), which also amended the Act on Proceedings in Matters of Judges and State Prosecutors (no. 7/2002 Coll.), as from 1 November 2009 the Composition of this court has changed. The Disciplinary Court acts in chambers composed of the presiding judge, vice-presiding judge and four associate judges. The presiding judge is selected from judges of the SAC, whereas the vice-presiding judge from judges of the Supreme Court. Two of the associate judges are enforcement agents, one associate judge is an attorney-at-law registered with the Czech Bar of Attorneys of Law and the last associate judge practices law in other fields.

³³⁰ Decision of 2 December 2009, No. 11 Kse 3/2009-51; the matter is registered at the Constitutional Court under No. Pl. ÚS 38/09; and order of 2 December 2009, No. 11 Kseo 6/2009-87; the matter is registered at the Constitutional Court under No. Pl. ÚS 39/09.



SPECIAL CHAMBER
DECIDING
ON CERTAIN MATTERS
OF JURISDICTION





The special chamber constituted pursuant to Act No. 131/2002 Coll., on Deciding Certain Jurisdiction Conflicts, settles positive and negative jurisdiction conflicts between parties, at least one of them being a court. The chamber decides in matters concerning conflicts of jurisdiction to issue a decision arising between courts on the one side and executive bodies or local, interest and profession self-regulatory bodies on the other side, and conflicts of jurisdiction between civil courts and administrative courts. It is up to the special chamber to establish which of the parties to the conflict has the jurisdiction to issue a decision in a specific matter. The composition, competence and jurisdiction of the special chamber was inspired by the special chamber established pursuant to Act No. 3/1918 Collection of Acts and Decisions.

The special chamber is composed of an even number of judges, at least three of them being judges of the SAC

and three of them judges of the Supreme Court. The judges serve a three-year term of office, the presiding judge being elected from among the judges of the SAC in the first half of the term, and from among the judges of the Supreme Court in the second half of the term. The special chamber does not constitute an integral part of either of these courts. However, it may quash a decision of either of these highest courts, if they are parties to the dispute heard. An even number of judges is a guarantee that neither the judges from the civil branch of justice (Supreme Court judges), nor the judges from administrative justice (SAC judges) can be “outvoted” when deciding on the limits of jurisdiction of these two branches of justice. General provisions of the Code of Administrative Justice are followed in the procedure before the special chamber.

The Code of Civil Justice imposes on a civil court to discontinue the proceedings initiated upon an action by which a person claims that a decision of administrative authority in a public law matter be quashed, and the Code of Administrative Justice provides that an administrative court is to decline to decide on the matter by which a person claims review of a decision of an administrative authority in a private law matter. In such cases both the civil and administrative courts are obliged to instruct the plaintiff which court should be addressed. Thereby it is at the same time ensured that a plaintiff following such instructions does not miss the time-limit set forth by law to lodge an action. The time-limit is therefore suspended even if the plaintiff lodged an action to a court which had no jurisdiction.

The special chamber takes the decision on the authority that has jurisdiction in the matter at stake by an order and at the same time sets aside all the decisions taken by civil and administrative courts in this matter that contradict with its holding. It also decides by order when declining to decide on the matter or discontinuing the proceedings. There is no remedy admissible against the decision of the special chamber. A final decision of the special chamber is binding on the parties to the conflict, on the parties to the dispute in which the conflict arose, as well as on the administrative authorities and courts.

Altogether there have been 719 conflicts submitted to the special chamber from 2003 to 2009. More than two thirds of them concerned the disputes between civil and administrative courts. These generally stem from disputes in matters of trademarks, patents, land improvement, expropriation and entry of right to the land register. Conflicts between courts and administrative authorities hence constitute about 40% of the total case load. They mostly concern disputes flowing from the application of Act on Telecommunications and Act on

Electronic Communications, i.e. conflicts of jurisdiction between district (circuit) courts and the Czech Telecommunications Office.

Year	Number of matters submitted to the special chamber in the respective year	Number of matters settled by the special chamber in the respective year	Number of matters pending at the end of the respective year
2003	125	67	58
2004	111	127	42
2005	137	130	49
2006	41	65	25
2007	47	47	25
2008	131	129	27
2009	127	123	31

Table No. 12 Development of the number of matters submitted to the special chamber established pursuant to Act No. 131/2002 Coll., on Deciding Certain Jurisdiction Conflicts, and of the number of matters settled.

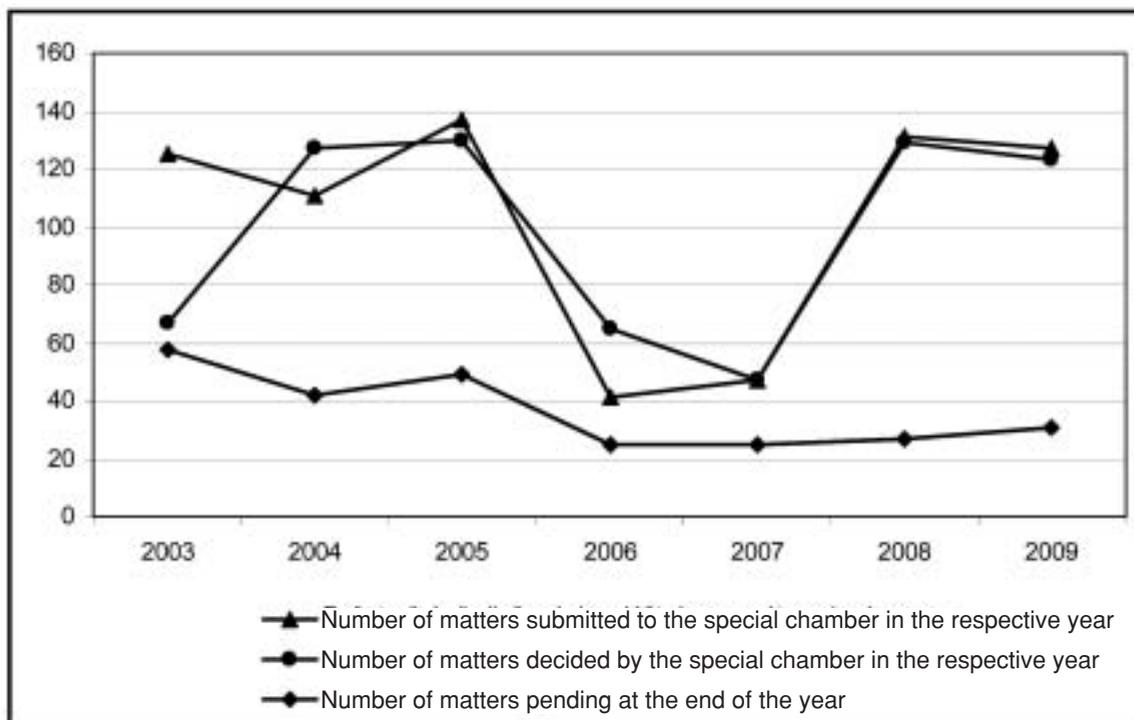


Chart No. 6 Development of the number of matters submitted to the special chamber established pursuant to Act No. 131/2002 Coll., on Deciding Certain Jurisdiction Conflicts, and of the number of matters settled.



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THE SUPREME ADMINISTRATIVE COURT

REPORT OF ACTIVITIES FROM 2003–2009

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