

The right to a lawful judge

Abstract

This thesis deals with the basic subjective right to a lawful judge. Its basis consists of analysis of the constitutional and statutory provisions (formal aspect) and their interpretation in the context of merits of the right to a lawful judge (material aspect). The research question of this thesis is as follows: “*Are the statutory provisions (or tables of duties) and practices of courts in the Czech Republic aligned with principles and purpose of the basic right to a lawful judge?*”

General, basic and theoretical issues of the right to a lawful judge such as its nature as a basic subjective right, the scope of its addressees or relation to the right to a due process in line with Article 36 paragraph 1 of the Charter of fundamental rights are analyzed in the second chapter. Findings of this analysis are used to demonstrate the purpose for which the right to a lawful judge was included in the Charter of fundamental rights as well as the implications for independence of the judiciary and procedural rights of parties to the proceedings. Origin of the right to a lawful judge is subsequently explained by a short recourse in chapter three which deals with several historical periods which are most often linked to the necessity of the right to a lawful judge.

A deeper analysis of the lawful judge is initiated in chapter four which provides for eclectic description of individual components (terms, requirements) of the right to a lawful judge as it is interpreted by the research literature and especially by the case-law of the Constitutional Court. These individual components include the requirement of statutory provisions on court's and individual judges' competence, composition of the judicial body, requirements for the person in charge and exclusion of biased persons from hearing and determining the case.

Chapter five deals with a thorough analysis of selected legal instruments which are most closely linked to the legal instrument of the lawful judge and are situated in three procedural Acts currently in force, i.e. code of criminal procedure, civil procedure code and code of administrative court procedure, as well as several other proceedings such as the proceedings before the Constitutional Court or several international courts, including national courts' obligation to file a preliminary question with the European Court of Justice.

Chapter six deals with the table of duties as the instrument for allocation of the court's agenda to individual court's bodies, its legal requirements, its most frequent usage and individual defects of tables of duties as well as statutory provisions' inadequacies.

The penultimate chapter deals with court assessors. Theoretical introduction of this legal instrument is followed by a detailed breakdown of case-law of the Constitutional Court on allotment of assessors to individual cases and their subsequent relocation. This chapter is concluded with a critique of the current approach to the court assessors for its inconsistency in requirements on allocation and several objectionable connections of layman adjudication to the Article 36 paragraph 1 of the Charter.

The chapter eight, which constitutes the thesis conclusion, gives a summary of the significant ideas of the thesis, provides answer for the research question and sums up instances in which the right to a lawful judge is infringed.

Key words: right to a lawful judge, impartiality and independence, bias