

Copyright © 2015 by Academic Publishing House *Researcher*



Published in the Russian Federation
Russian Journal of Comparative Law
Has been issued since 2014.

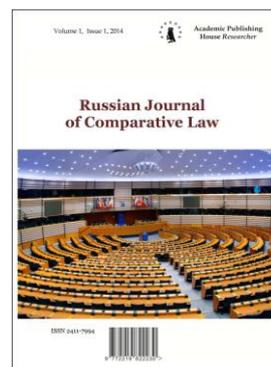
ISSN 2411-7994

E-ISSN 2413-7618

Vol. 5, Is. 3, pp. 82-87, 2015

DOI: 10.13187/rjcl.2015.5.82

<http://ejournal41.com>



Articles and Statements

UDC 341.01

On the Procedural Costs in Criminal Proceeding of the Czech Republic and the Swiss

Pavel N. Biriukov

Voronezh State University, Russian Federation
394033, Voronezh, Universitetskaja, pl. 1
Doctor of Legal Sciences, Professor
E-mail: birukovpn@yandex.ru

Abstract

This article brings to light the procedural costs (legal expenses) in accordance to the Criminal Procedure Code of the Czech Republic and the Swiss. The author provides a number of norms which regulate the legal expenses in sphere of criminal procedure in two States. The author analyzes the activity of Czech and Swiss judges, prosecutors, advocates and others subjects of criminal procedure. The obligations of States are investigated in detail. The author examines the rules for reimbursement of the defense, witnesses and experts, compensation expenses incurred for unjustified criminal prosecution ect.

Keywords: Czech Republic; Swiss; Code of Criminal Procedure; criminal proceedings; procedural costs.

Introduction

The rules for reimbursement of expenses during the criminal proceedings in the Czech Republic are determined by the Criminal Procedure Code (hereinafter – CPC) [1]. The CPC of the Czech Republic provides both general and specific rules for reimbursement of procedural costs.

There is basic document in the sphere of criminal procedure in the Swiss – CPC of October 5, 2007 [2]. Some questions relative legal expensive are regulated by the Criminal Justice Authorities Act of 19 March, 2010 [3].

Materials and methods

The main sources for writing this article became the official documents of the Czech Republic and the Swiss, materials of the journal publications and archives.

The study used the basic methods of cognition: the problem-chronological, historical and situational, systemic and the method of comparative law. Author's arguments are based on

problem-chronological approach. The use of historical and situational method allows to reproduce assessment approach to the problem of the criminal procedure legislation of the Czech Republic and the Swiss. Method of comparative law defines the difference in views on actual rules of the activity of the judges, prosecutors, advocates and others subjects of Czech law and Swiss law. A systematic method does achieve a variety of disciplines (criminal law, criminal procedure law etc) accessible and comparable, as present is determined by the past and the future - by the present and the past.

Discussion

The CPC of the Czech Republic and Switzerland provides both general and special provisions concerning the reimbursement of expenses.

First, § 151 of the Criminal Procedure Code of the Czech Republic sets out general rules for costs in criminal proceedings, which are carried by State. As a rule, all the costs necessary for the investigation and prosecution, including at the stage of the enforcement proceedings shall be carried by the state. However, the State does not carry its own costs of the accused, civil defendant and the victim, nor the costs arising from the involvement of defense counsel and a representative [7].

At the same time, the State bears the costs of mandatory defense cases that have arisen as a result of a complaint of a violation of the law. The defendant, who has been appointed to the accused also receives payment and reimbursement under the special rules. The limit of compensation and overhead costs is issued by a decision on the proposal of the defense authority of criminal justice, which ends the prosecution. The chairman of the senate of the court of first instance defines it during the court proceedings. On the proposal of the defense counsel the prosecutor can decide a preliminary award to be given even before the end of the criminal proceedings, if it's justified by the duration of criminal proceedings or other important reason [8].

Similar provisions are contained in CPC of Switzerland. In accordance to Art. 417 CPC of Swiss in the event of failure to comply with procedural requirements or any other form of procedural default, the criminal justice authority may require the party responsible for the default to pay procedural costs and damages regardless of the outcome of the proceedings.

The participation of more than one person and liability of third parties is regulated by Art. 418 CPC. If more than one person is liable to pay costs, the costs shall be imposed proportionately. Where two or more persons are jointly responsible for costs being incurred, the criminal justice authority may order that persons concerned are jointly and severally liable to pay the costs. It may require third parties in accordance with the civil law principles of liability to bear the costs jointly and severally with the accused.

The Swiss or the canton may take legal action against persons who willfully or through gross negligence lead it to incur costs by: a) causing proceedings to be instituted; b) make the proceedings considerably more complicated; c) bringing about a decision that is overturned in review proceedings.

The criminal justice authority shall decide who is to bear any costs in the final judgment. It may make an advance decision in: a) interim decisions; b) decisions on the partial abandonment of the proceedings; c) decisions on appeals against interim and abandonment decisions (Art. 421 CPC).

Procedural costs shall be borne by the Confederation or the canton that conducts the proceedings, unless otherwise provided in this Code (Art. 423 CPC of Swiss). The Confederation and the cantons shall issue regulations on the calculation of procedural costs and shall stipulate the fees. They may stipulate flat-rate fees for simple cases that also cover the outlays.

The criminal justice authority may defer its claim to procedural costs or, taking account of the financial circumstances of the person liable to pay, reduce or remit the sum due. The accused shall bear the procedural costs if he or she is convicted.

If the proceedings are abandoned or the accused acquitted, all or part of the procedural costs may be imposed on the accused if he or she has unlawfully or culpably caused the proceedings to be initiated or has obstructed their conduct. The accused shall not bear the procedural costs that:

a) the Confederation or the canton has incurred through unnecessary or flawed procedural acts;

b) are incurred for translations that were necessary because the accused speaks a foreign language. The accused shall bear the costs of the private claimant's legal aid representative only if he or she has the financial means to do so.

If the proceedings are abandoned or result in an acquittal because the accused is not legally responsible due to a mental disorder, the costs may be imposed on the accused if this appears reasonable in all the circumstances (Art. 419).

Second, the rules of Criminal Procedure Code of the Czech Republic and Switzerland regulate a specific questions of reimbursement of criminal procedure costs.

The procedural costs comprise the charges that cover fees and outlays in a specific criminal case. Outlays are in particular: a) the cost of the duty defence lawyer and legal aid representative; b) the cost of translations; c) the cost of expert reports; d) the cost incurred by involving other authorities; e) postage, telephone and similar expenses (Art. 422 CPC of Swiss).

The CPC of the Czech Republic (§ 152) establishes an obligation to refund the costs of criminal proceedings by a convicted. In particular, if the person has been convicted which came into force by the verdict, it must reimburse to the state: a) the costs associated with the execution of detention [10]; b) the costs associated with the enforcement of imprisonment [5].

The daily rate is attributable to the costs associated with the execution of detention and to the enforcement of imprisonment, is determined by the Minister of the Interior.

The convicted is also obliged to compensate the so-called "lump-sum expenses" - the other costs that are borne by the state. This amount is determined by the Minister of Justice by his order.

The CPC of the Czech Republic (§ 153) also establishes the following provision: a person wrongly submitted an application to reopen the proceedings, is obliged to compensate the State a cost of production of this statement, namely a lump sum to be determined by the Minister of Justice. These provisions do not apply to the prosecutor [6] and bodies "entrusted to care of young people.

The obligation of cost recovery of the victim is fixed in § 154 of the CPC of the Czech Republic. "If the victim of at least partly recognized the right to compensation, the convicted, who was given the responsibility of redress, must reimburse the costs necessary for the purposeful presentation of his claim to damages in criminal proceedings, including the costs incurred by engaging counsel or other authorized person".

Adjudication of the obligation to reimburse costs of the criminal proceedings, and their size is described in detail in § 155 of Czech's CPC. The question of the obligation to reimburse the costs of the victim and their amount (§ 154), as well as the obligation of compensation for costs associated with the execution of detention (§ 152) is decided by a Chairman of the judicial collegium of the court of the first stage after the sentence comes into force. This decision may be appealed, which entails suspensive effect.

Third, according with Art. 427 CPC of Swiss the private claimant may be ordered to pay procedural costs incurred as a result of his or her applications on civil matters if: a) the proceedings are abandoned or the accused is acquitted; b) the private claimant withdraws the civil claim before the conclusion of the main hearing before the court of first instance; c) the civil proceedings are dismissed or remitted to the civil courts.

In the case of offences prosecuted only on complaint, procedural costs may be imposed on the complainant where he or she has willfully or through gross negligence brought about the proceedings or has obstructed their conduct, or on the private claimant where: a) the proceedings are abandoned or the accused is acquitted; and b) the accused is not liable to pay costs.

If the complainant withdraws the criminal complaint as part of a settlement arranged by the public prosecutor, the Confederation or the canton shall normally bear the procedural costs. An agreement between the complainant and the accused on who is to bear the costs in the event that the criminal complaint is withdrawn requires the approval of the authority that orders the case to be abandoned. The agreement may not prejudice the Confederation or the canton.

If the accused is wholly or partly acquitted or if the proceedings against the accused are abandoned, he or she is entitled to: a) damages for his or her expenditure incurred in the appropriate exercise of their procedural rights; b) damages for the financial losses that he or she incurs due to the required participation in the criminal proceedings; c) satisfaction for particularly

serious violations of his or her personal circumstances, in particular due to deprivation of liberty (Art. 429 of CPC of Swiss).

Fourth, in accordance with § 104 of the CPC witness is entitled to reimbursement of necessary expenses and lost earnings. The right is extinguished when the witness does not submit it in the period up to three days after his interrogation, or after it was reported that the questioning did not take place; this witness should be warned. The amount of payment is determined by the person who called the witness and by the Chairman of the Senate [3] in the court.

Fifth, § 111 of the CPC defines the rules of payment of the expert. The amount of payment is determined by the one who has attracted the expert, and in the trial stage - by the Chairman of the Senate. If a person has attracted expert or Chairman of the Senate does not agree with the amount of the payment, a decision is made. This decision is subjected to appeal with suspensive effect.

Sixth, in Switzerland there are rules about the features of compensation for the damage in rehabilitation.

In accordance to Art. 431 of CPC of Swiss the criminal justice authority may reduce the damages or satisfaction or refuse to pay if: a) the accused has unlawfully and culpably brought about the proceedings or has obstructed their conduct; b) the private claimant is required to pay damages to the accused; or c) the accused's expenditure is negligible. If compulsory measures have been applied to the accused unlawfully, the criminal justice authority shall award the accused appropriate damages and satisfaction. There is a right to damages and satisfaction in relation to remand and preventive detention if the permitted period of detention is exceeded is and the excessive deprivation of liberty cannot be not accounted for in sanctions imposed in respect of other offences. The right to apply if the accused: a) is sentenced to a monetary penalty, community service or a fine and the equivalent alternative custodial sentence would not be substantially shorter than the time spent on remand or in preventive detention; b) receives a suspended custodial sentence the length of which exceeds the time spent on remand or in preventive detention.

In the seventh, the Swiss CPC has the rules governing compensation for damage as a result of appeals procedures. Pursuit Art. 428 of CPC of Swiss the costs of the appellate proceedings are borne by the parties according to whether they are successful or not. An appellant is also regarded as unsuccessful if the appeal is dismissed without its substance being considered or if the appeal is withdrawn. Where an appellant secures a more favourable decision, he or she may be ordered to pay costs if: a) the appeal is successful due to circumstances that became apparent for the first time in the appellate proceedings; or b) only minor changes are made to the contested decision. If the appellate authority itself issues a new decision, it shall also review the ruling on costs issued by the lower court. If it quashes a decision and remits the case to the lower for a new decision, the Confederation or the canton shall bear the costs of the appellate proceedings, if the appellate authority so decides, those of the lower court. If an application for a review is approved, the criminal justice authority that must subsequently deal with the case shall decide at its discretion on the costs of the first proceedings.

Results

Thus, under Swiss CPC there are following procedural costs: general and special costs. General procedural costs are: the cost of the duty defense lawyer and legal aid representative; procedural requirements or any other form of procedural default, costs of persons not legally responsible due to a mental disorder. Special costs cover fees and outlays: the cost of translations; the cost of expert reports; the cost incurred by involving other authorities; postage, telephone and similar expenses.

Pursuant Czech CPC The costs of criminal proceedings, including sentence enforcement proceedings, shall be borne by the State; the latter, however, shall not bear the costs of the accused, the participating person and the injured, and the costs of the counsel and proxy. The State, however, shall bear the costs of mandatory defense incurred by the accused as a result of filing the complaint for the breach of law. If the defendant was found guilty in a final sentence, he shall have to reimburse the State: the costs incurred by his remand in custody; the fee and cash expenditures of the counsel assigned by the State unless the defendant is entitled to a free defense counsel; the costs incurred by serving an imprisonment sentence and a lump sum for other costs borne by the State.

Conclusion

Thus, the rules of the CPC of the Czech Republic and Switzerland's CPC regulate compensation as the total expenditure in the field of criminal justice as well as funds spent for the implementation of certain legal proceedings. Some decisions of the foreign legislator can be used in the Russian criminal proceedings.

Примечания:

1. Zákon č. 141/1961 Sb., O trestním řízení soudním (trestní řád), ve znění zákona č. 265/2001 Sb. // URL: <http://www.psp.cz/sqw/sbirka.sqw?cz=141&r=1961>.
2. Schweizerische Strafprozessordnung (Strafprozessordnung, StPO) vom 5. Oktober 2007 // <https://www.admin.ch/opc/de/classified-compilation/20052319/index.html#a435>
3. Bundesgesetz über die Organisation der Strafbehörden des Bundes (Strafbehördenorganisationsgesetz, StBOG) vom 19. März 2010 // <https://www.admin.ch/ch/d/as/2010/3267.pdf>
4. Zákon ze dne 8. ledna 2009 trestní zákoník // <http://www.zakonyprolidi.cz/cs/2009-40>.
5. Sizov A.A. Some Procedural Actions Which are Conducted by the Decision of Czech Police // Вестник полиции. 2015. Vol.(3). Is. 1. P. 23-27.
6. Zákon ze dne 17. července 2008 o Policii České republiky // URL: <http://www.zakonyprolidi.cz/cs/2008-273>.
7. Тимофеева А.В. Участие адвоката в уголовном процессе в Чешской Республике // Евразийская адвокатура. 2013. № 4 (5).
8. Donatsch A., Schwarzenegger C., Wohlers W. Strafprozessrecht. 2. Auflage, Zürich/Basel/Genf 2014, 393 S.
9. Donatsch A., Eliane W. Exploring the Tension Between the Obligation on the Police of Swiss to Prevent and Prosecute Crime // Вестник полиции. 2015. Vol.(3). Is. 1. P. 10-16
10. Khalaryan E.A. Some Peculiarities of Preliminary Investigation in Czech Republic // Вестник полиции. 2015. Vol.(3). Is. 1. P. 17-22.

References:

1. Zákon č. 141/1961 Sb., O trestním řízení soudním (trestní řád), ve znění zákona č. 265/2001 Sb. // URL: <http://www.psp.cz/sqw/sbirka.sqw?cz=141&r=1961>.
2. Schweizerische Strafprozessordnung (Strafprozessordnung, StPO) vom 5. Oktober 2007 // <https://www.admin.ch/opc/de/classified-compilation/20052319/index.html#a435>
3. Bundesgesetz über die Organisation der Strafbehörden des Bundes (Strafbehördenorganisationsgesetz, StBOG) vom 19. März 2010 // <https://www.admin.ch/ch/d/as/2010/3267.pdf>
4. Zákon ze dne 8. ledna 2009 trestní zákoník // <http://www.zakonyprolidi.cz/cs/2009-40>.
5. Sizov A.A. Some Procedural Actions Which are Conducted by the Decision of Czech Police // Vestnik policii. 2015. Vol.(3). Is. 1. P. 23-27.
6. Zákon ze dne 17. července 2008 o Policii České republiky // URL: <http://www.zakonyprolidi.cz/cs/2008-273>.
7. Timofeeva A. V. Uchastie advokata v ugovnom protsesse v Cheshskoi Respublike // Evraziiskaya advokatura. 2013. № 4 (5).
8. Donatsch A., Schwarzenegger C., Wohlers W. Strafprozessrecht. 2. Auflage, Zürich/Basel/Genf 2014, 393 S.
9. Donatsch A., Eliane W. Exploring the Tension Between the Obligation on the Police of Swiss to Prevent and Prosecute Crime // Vestnik policii. 2015. Vol.(3). Is. 1. P. 10-16
10. Khalaryan E.A. Some Peculiarities of Preliminary Investigation in Czech Republic // Vestnik policii. 2015. Vol.(3). Is. 1. P. 17-22.

УДК 341.01

Судебные расходы в уголовном процессе Чехии и Швейцарии

Павел Николаевич Бирюков

Воронежский государственный университет, Российская Федерация
394000, г. Воронеж, Университетская пл., 1
Доктор юридических наук, профессор
E-mail: birukovpn@yandex.ru

Аннотация. Статья проливает свет на вопрос о судебных издержках в чешском уголовном процессе. Автор приводит нормы, которые регулируют уголовное судопроизводство в Чехии Швейцарии. Анализируется деятельность судей, прокуроров, адвокатов и других субъектов уголовного судопроизводства. Подробно исследуются обязательства государств по финансированию уголовного судопроизводства. Автор рассматривает правила возмещения расходов на защитника, свидетеля и эксперта, компенсации трат, понесенных за необоснованное привлечение к уголовной ответственности и другие затраты.

Ключевые слова: Чехия; Швейцария; Уголовно-процессуальный кодекс; уголовное судопроизводство; судебные расходы.