

Abstract

The right to an effective investigation, as a human right, has been derived from the jurisprudence of the European Court of Human Rights (ECtHR) from the substantive rights contained in the Convention for the Protection of Human Rights and Fundamental Freedoms. The obligation to conduct an investigation is not dependent on formal procedural stages and belongs to the subject of the right when defensible claims are made. The essence of this right includes the duty of law enforcement authorities to investigate the matter properly, meaning impartially and independently, sufficiently and thoroughly, and also promptly while ensuring public oversight.

This right is not explicitly enshrined in Czech criminal procedure and can only be applied indirectly, which poses significant practical application problems. Given this fact, it is a topical and significant issue. The right to an effective investigation has been formulated through judicial practice, which better reflects the shortcomings of the absence of direct regulation in the Criminal Procedure Code. Case law primarily determines the substantive scope of the right to an effective investigation, and the key issue is how the Constitutional Court implements this obligation into national law. The Constitutional Court considers the ECtHR's jurisprudence in the context of the predominantly continental nature of Czech law while also recognizing the individual as a rights-bearing subject. On the other hand, the Criminal Procedure Code insufficiently considers the right to an effective investigation due to the lack of re-codification, which would allow for the incorporation of developmental trends in the field of the right to an effective investigation, leaving the right within the judiciary's purview.

In this work, I will analyze the ECtHR's case law, which serves as the basis and dynamic framework of the right, to ascertain whether the indirect protection of the subject's right – considering its characteristics – is sufficient. In this context, I will also focus on the Constitutional Court's case law, which interprets the ECtHR's conclusions within the Czech legal system. The work will also compare the courts' conclusions with current doctrine and the valid regulation of the Criminal Procedure Code, with the aim of considering the planned re-codification of the Criminal Procedure Code and contributing my own thoughts on the points that the re-codification should address. It is beyond the scope of this work to address the right comprehensively, as the link between the right and the substantive scope of individual rights in the Convention does not allow for it.