



Czech Bar Association

Rule of Law Report Czech Republic

47th European Presidents' Conference 2019

Introduction

The Czech Bar Association is the biggest legal professional organization in the Czech Republic. It is a self-governing organization performing public administration in the area of the Legal Profession and, as such, it protects and guarantees the quality of the provision of the legal services by lawyers. The topic of the rule of law is an issue that the Czech Bar Association has been dealing with throughout its activities on a long-term basis.

Lawyers against Totalitarianism

On the occasion of the celebrations of the 30th anniversary of the 17th November 1989 in the year 2019, the Czech Bar Association will commemorate this historical event with a series of projects called „Lawyers against Totalitarianism“. The events will take place in November 2019 and will include a professional conference on the topic „Lawyers against Totalitarianism“, preview of the exhibition „Lawyers against Totalitarianism“ and a book launch at the Czech Bar Association. There will also be a discussion forum related to the Human Rights Day: Freedoms and Rights in the 21st century. The Czech Bar Association will remember those lawyers who were before 1989 defending dissidents – opponents of the Communist regime, and thus also defenders of the rule of law, as well as fighters for freedom and human rights. It will also commemorate lawyers who were in the past engaged in activities against totalitarian regimes. The project will identify the role of lawyers in trials in which there was an individual standing against the whole totalitarian regime and its judiciary system – even at the cost of inflicting problems upon oneself, putting one’s professional career, health or even life in danger.

Obstruction of Justice

The Czech Bar Association considers as problematic the proposed legal regulation of a new criminal offence - obstruction of justice. In 2018 the Government of the Czech Republic submitted to the Parliament for adoption a new amendment of the Law No. 40/2009 Coll. (“Criminal Code”) extending the list of offences by a new offence “obstruction of justice”, which applies to presenting evidence known to the offender to have been fabricated or changed and to fabricating or changing evidence. The elements of crime originally covered also soliciting to committing an offence of making false accusations, perjured testimony and false expert testimony, and perjured interpretation, which was a very dangerous provision that could be easily misused against lawyers who provide legal services in court proceedings (in both civil and criminal, as well as administrative procedures). Following the intervention of the Czech Bar Association, a compromise draft was adopted, which did introduce the new offence of obstruction of justice but in amended version and without the controversial provision regarding the act of solicitation. However, it should be noted that in most cases, lawyers are not able to objectively evaluate whether an evidence submitted by his/her client is fabricated or not. Moreover, the Czech legal order already covers these issues and there is no need for such a new provision.

DAC 6 Transposition

The Czech Bar has been witnessing repeated attempts to breach lawyer's confidentiality or diminish it recently on national level, based on European legislation (also sometimes controversially political), justified by concerns about money laundering or other supposedly lofty reasons, mainly transparency. The biggest threat emerging in recent years are the implementations of DAC Directives, currently the Council Directive (EU) 2018/822 of 25 May 2018, called DAC6, affecting the field of taxation, which may impose a new reporting obligation on lawyers in connection with aggressive tax planning. We have previously faced many problems regarding the implementation of the DAC 5 Directive as the Czech legislative proposal went beyond the scope of the Directive and threatened lawyers with the unprecedented breach of confidentiality obligation and professional secrecy. As the Czech Bar believes, that lawyer's confidentiality is a client's privilege and the cornerstone of the provision of legal services, and an obligation that is binding on every lawyer at every step they make when practising law. We have reasonable grounds to be afraid that there will be similar restrictive national attempts in the awaiting implementation of DAC 6 Directive. We understand the aim of the Directive, however, this aim cannot be achieved through the breach of the core principles of the profession which constitute the safeguards for the rule of law and fair trial.

The Czech Bar Association will therefore organise a conference on this topic in April 2019 in Prague.

Access of Lawyers to Court Buildings

Members of the Board of Directors of the Czech Bar Association have addressed the question of ensuring the dignity of the access of lawyers to court buildings for several times. It can be concluded that the vast majority of competent judicial officers have understood the absurdity of detailed inspections of lawyers who act as an integral part of the judicial system in the judicial proceedings and thus help to promote the most significant right of a party, which is the right to a fair trial. In most of the courts, the examinations were abolished, in the remaining cases they are mostly carried out by use of control frames or scanners. However, there are still some cases occurring which could be and usually are understood as an attack on dignity of lawyers (when the lawyer is asked to remove the belt, footwear, hairclips, etc.).

Based on two recent cases, when two district courts ordered that lawyer should be guarded during the proceedings by a judicial guard, the Czech Bar published its position clearly stating that such stigmatisation of lawyers (being considered as a security threat) is not in compliance with the § 16 of the Act No. 85/1996 Coll. on the Legal Profession stating that: *"Lawyers shall be obliged to protect and enforce the rights and legitimate interests of clients and to follow their orders."* nor the § 17 embodying that: *"A lawyer shall proceed in his legal practice in such a manner that the dignity of the legal profession may not be degraded; for this purpose he shall be obliged to observe the rules of professional ethics and competition."* The Czech Bar believes that, for similar decisions ordering such "escorts of a lawyer" the Court official must bear a personal (disciplinary) responsibility.

In this context, it is to be recalled that legal profession is a part of the administration of justice and therefore, inadequate checks of lawyers during court proceedings constitute unjustifiable disparagement of the constitutional mission of legal profession anchored also in Art. 37 para. 2 of the Constitutional act No. 2/1993 Coll. Charter of constitutional rights and freedoms as amended, stating that *"In proceedings before courts, other State bodies, or public*

administrative authorities, everyone shall have the right to legal assistance from the very beginning of such proceedings” and thus depreciation of the justice as such.

Conclusion

Dr. Antonín Mokřý, member of the Board of Directors of the Czech Bar Association and past President of the CCBE notes: *“Are we supposed to fear for the quality of the rule of law in the future in Europe as a whole? There is still a strong democratic tradition present – mostly in the “old” countries of the European Union, however, what we have been witnessing in the last few years is alarming. The post-factual world starts to celebrate its first success. Phenomena are not important in terms of what they actually are like but in terms of what kind of emotions they induce. And, unfortunately, not an insignificant part of the population swoons over something that is foisted upon them and later deluded, despite the fact that this something is more of a virtual reality rather than true reality. On the one hand, people succumb to fear from threats that do not even exist in reality, on the other hand, they are carried away and applaud politicians who offer easy solutions to complicated matters. People do not bother to think about the state of things on a deeper level”.*