

## The core duties of the legal profession (advocacy)

The term of a legal profession can be understood in a quite broad sense, including all sorts of legal professions, such as state prosecutors, judges, civil law system notaries, or other types legal advisers, including attorneys and advocates. As the majority of us here do belong to the advocacy, I shall focus exclusively on this profession.

The advocacy is the only profession that is not part of the state administration and that does not directly depend on the state funding. Its existence is also guaranteed by the Czech Charter of Basic Human Rights, since under Article 36 everybody can revert to an independent court with his case, and under Article 37 of the Charter, everybody has the right to legal advice at any stage of any legal proceeding.

Under the Czech Act on Advocacy, that is partly also referring to the Charter, the provision of legal services is defined and understood as representing clients in proceedings before courts and other bodies, acting as defence advocate in criminal cases, giving legal advice, preparing documents, legal analyses and other forms of legal aid and legal advice where these are provided on a permanent basis and for a fee.

Under Section 3 of the Czech Act on Advocacy, the advocate shall be independent in the provision of legal services and he shall be bound by the law and, according to the law, by instructions of his client's orders. A general encyclopaedia characterises the advocate as a person who speak (and writes) on behalf of another person, especially in a legal context and who has some special skills such as interpersonal skills, analytical mind, critical thinking and commercial sense.

It is worth noting that duties of the advocate are contained in Chapter 3 of the Act on Advocacy, starting with Section 16 and ending with Section 31, which chapter is followed by the chapter on disciplinary proceeding before the Bar.

The advocate shall be obliged to protect and enforce the rights and legitimate interests of clients and to follow their instructions. The instructions of clients shall not be binding if these are contrary to legal or professional regulations and the advocate shall be obliged to reasonably notify his clients of this principle.

In his practising the legal profession, the advocate shall be obliged to act faithfully and with integrity. The advocate shall be obliged to consistently use all legal measures and, within these measures, to apply everything in the interest of his client that the advocate believes may be beneficial.

The Code of Conduct says more specifically that the advocate is generally obligated by his honest honourable and decent conduct to contribute to the dignity and stature of the legal profession. Further, the advocate is obligated to honour the commitments he accepts. He may only accept a commitment or guarantee for a foreign commitment if he is certain of fulfilling it. The behaviour of the advocate in connection with the practice of the legal profession is material, sober and not intentionally false.

The advocate shall proceed in his legal practice in such a manner that the dignity of the legal profession may not be degraded and for this purpose he shall be obliged to observe the rules of professional ethics and competition.

Advocates do not have the general duty to accept appointment in a client's matter. The Act however foresees circumstances where the advocate is expressly obliged to refuse to provide legal services, namely if

- a) he has provided legal services in the same or a related case to someone else whose interests are contrary to the interests of the person requesting the provision of legal services,
- b) a person whose interests are contrary to the person requesting legal services has been provided legal services in the same or a related case by a advocate with whom the advocate practices law,
- c) the advocate possesses information on another or earlier client which may result in unlawful benefits for the person applying for the provision of legal services,
- d) the advocate, or a person with a close personal or professional relationship has participated in the proceeding, or
- e) if the interests of the person requesting legal services are contrary to the interests of the advocate or a person with a close relationship to the advocate.

The advocate is entitled to withdraw from the contract to provide legal services, or to apply for the cancellation of appointment or to request the Bar to appoint another advocate, if the relationship between himself and his client has been impaired, or if the client fails to cooperate.

The advocate shall be entitled to take such steps if his client insists that the advocate should follow his orders although the client has been informed that those orders are contrary to the law or to professional rules.

The advocate may withdraw from the contract to provide legal services if his client fails to advance a reasonable portion of a fee for the provision of legal services despite the request of the advocate.

Unless the advocate and his client agree otherwise, or the client takes another measures, the advocate shall be obliged, during 15 days following the date on which he withdrew from the contract to provide legal services to carry out all necessary actions in order to prevent any harm to his client's rights or legitimate interests. This rule does not apply if the client notifies his advocate that he does not insist on the fulfilment of that duty.

The advocate is obliged to preserve professional secrecy regarding any facts known to him in connection with his provision of legal services.

The duty of professional secrecy may be waived only by his client, and, after the client's death or termination of existence, his successor; should there be more than one legal successor the consent of all legal successors shall be necessary to waive the duty of professional secrecy.

The waiver by the client of the professional secrecy duty must be done in writing and must be addressed to the advocate. It is possible that the waiver is provided and recorded in the protocol at the court hearing.

However, the advocate shall be obliged to observe the duty of professional secrecy even if such waiver has been delivered to him, if the circumstances appear to suggest that the waiver was made under pressure or duress, (typically by clients held in detention, and the like).

The duty of professional secrecy survives also the termination of a respective advocate's Bar membership.

The advocate shall be responsible to his client for any damage the advocate has caused in relation to his practising the legal profession. The advocate shall be responsible for damage caused to his client even if the damage has been caused by a substitute advocate or an employee other than an employed advocate, in connection with the practice of the legal profession; the responsibility of these persons for damage caused to their employer under special legislation shall not be prejudiced thereby.

The advocate may not slander another advocate and may not initiate a legal dispute against him without a serious reason. If the counterparty is represented by an advocate, the advocate may not deal with the person directly without the prior consent of the advocate representing this person or refuse to deal with this advocate.

The advocate may not accept provision of legal services to a client who is already being provided with legal services by another advocate without the consent of the already authorised advocate; should there be no such consent, he may not accept provision of legal services until the duly terminated relationship with the already authorised advocate.

The advocate is obligated to maintain the proper respect and courtesy towards courts and judges, public administration bodies and other bodies which made decisions in legal matters, as well as towards persons who fulfil their tasks.

The advocate may not present data, or suggest evidence which he knows to be false or deceptive, even as instructed by the client to do so during proceedings.

The advocate is obligated during proceedings to act honestly, respect the legal rights of the other participants of proceedings and behave towards them and other persons

participating in the proceedings in such a manner not to degrade their dignity or the dignity of the legal profession. In such matters he may not deal with persons who fulfil the tasks of courts or other bodies and submit documents to them in the absence or without the knowledge of the advocate of the other party or such a party that is not represented by an advocate, except if procedural regulations allow such a procedure.

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