

CZECH REPUBLIC

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1. DEFINITION – PRESENTATION

What attorney-client privilege is and what it is not?

An attorney at law is obliged to maintain confidentiality of all facts learned in relation to provision of legal services.

An attorney at law is not bound by the confidentiality duty in relation to a person charged with individual tasks within the provision of legal services if such a person is bound by the confidentiality duty (e.g. an employee of the attorney at law).

Confidentiality duty survives removal from the list of attorneys at law.

Confidentiality duty to the extent specified in the Advocacy Act (Act No. 85/1996 Coll.), as amended (the “Act”) applies accordingly to (i) employees of the attorney at law or of the attorney’s law firm as well as to other persons that are involved, along with the attorney at law, or the attorney’s law firm, in the provision of legal services, (ii) members of the Czech Bar Association (the “Bar”) bodies and its employees as well as all persons participating in disciplinary proceedings, including attorneys at law appointed by the Chairperson of the Supervisory Board of the Bar to conduct preliminary actions to verify the occurrence of disciplinary misconduct.

There are certain exemptions from confidentiality duty, e.g. when the attorney at law is a bankruptcy administrator, he/she has the duty to report money laundering suspicions etc. to the Bar. The attorney at law cannot rely on his/her confidentiality obligation if the relevant information (fact) does not relate to the provision of legal services but, for example, to other business of the attorney at law.

Where the attorney at law is obliged to keep confidentiality, the state authorities and other persons must respect this and must not force the attorney at law to breach such confidentiality duty.

2. SOURCES

From which sources is the legal privilege derived?

2.1. Relevant statutes

The attorney-client privilege rules are governed by the Act and subsequent regulations of the Bar. Certain exemptions are defined in the Anti-Money Laundering Act (Act No. 61/1996 Coll.), as amended. In the field of penal law, the attorney-client privilege rules are governed, in addition to the above, also by the Penal Procedure Code (Act No. 141/1961 Coll.), as amended.

2.2. Relevant Case Law

For example, decisions of the Constitutional Court Nos.: III. ÚS. 486/98, Pl. ÚS. 29/2000 and II. ÚS. 189/01.

3. SCOPE/LIMITS

Can the attorney-client privilege be waived? If yes, how?

Is the privilege limited? Which documents/information are involved?

The confidentiality duty of an attorney at law may be released only by his/her client, or after decease of the client, by the client's legal successor. If the client has more legal successors, all of them must agree with such release from confidentiality. In case of a private individual, an interpretation prevails that the term "successor" for this purpose does not mean the heirs who inherit the descendant's property, but his/her spouse (or registered partner) and children, or, if s/he had none, his/her parents (protection of personality according to Section 15 of the Czech Civil Code – Act No. 40/1964 Coll.).

The release must be expressed in writing and addressed to the attorney at law. In court proceedings, it is also possible to express such release orally at a hearing. Even after release from confidentiality, the attorney at law must maintain confidentiality if it is apparent that the client or his/her legal successor made waiver under pressure or distress.

The confidentiality duty does not apply to the extent required for the court or other proceedings if the subject matter of the proceedings is a dispute between the attorney at law and the client or his/her legal successor; the confidentiality duty also does not apply in case of proceedings defined in the Act, in complaint proceedings, or a remedy against a decision of the Bar, as well as in proceedings as specified in the Act, to the extent necessary for the protection of the rights or interests of the attorney at law protected by law.

The confidentiality duty of the attorney at law does not affect his/her duties stipulated in special regulations on administration of taxes and charges; however, the confidentiality duty still applies in this field with respect to the nature of matters in which the attorney at law provided legal services.

The confidentiality duty cannot be applied in disciplinary proceedings as well as towards an attorney at law appointed by the Chairperson of the Supervisory Board of the Bar to conduct preliminary actions to verify the occurrence of disciplinary misconduct.

In the area of penal law, the confidentiality duty does not affect the legal obligation to prevent commitment of a criminal offence. Therefore, if an attorney at law realises that a

serious criminal offence (the list of such offences is available in Section 368 of the Penal Code – Act No. 40/2009 Coll.) is going to be committed, he has to use all his/her effort to avert and/or to announce the same to the prosecuting attorney or to the Police, like any other person. However, if the criminal offence has once been committed, an attorney at law is, in contrast to other persons, released from the notification duty (to the Police or to the prosecuting attorney) if he/she becomes aware of such fact in connection with the conduct of his/her profession. Only junior lawyers and clerics of churches entitled to hear confessions have similar privileges.

A special protection is granted to telephone calls between a person accused of a crime and that person's attorney at law. Such calls must never be tapped nor recorded. If a police officer authorised to exercise wiretaps realises, during a taping session, that the accused person is talking to his/her attorney at law, he/she must immediately interrupt the session, destroy all records thereof, and not use the obtained information in any case.

3.1 Between lawyers

Is correspondence between lawyers protected?

If the correspondence is between attorneys at law and relates to facts learned in relation to provision of legal services, it would be protected. Other correspondence is not protected by special rules applicable to attorneys at law, however, protection may be applicable based on generally applicable legal regulations, e.g. as trade secrecy.

The protection does not relate to correspondence with in-house lawyers.

3.2 Third parties

The correspondence between attorneys at law is protected. The correspondence between third parties is not protected. It is still questionable (no court decision are available) whether parts of correspondence between third parties (e.g. between in-house counsel and his/her manager) referring to the correspondence with the attorney at law are protected. However, it is advisable to mark such part of the correspondence as privileged.

4. IN-HOUSE LAWYERS

Which regulations regarding legal privilege apply to in-house lawyers?

In-house lawyers are not protected by the Act. They are obliged to keep confidentiality in the extent imposed (and allowed) by general regulations, e.g. the Commercial Code (with respect to trade secrets) and/or the Labour Code. They may be released from such duty by their employer.

The extent of such confidentiality duty (right) is significantly weaker than for attorneys at law. For example, if the in-house lawyer is called as witness in the criminal proceedings, s/he cannot refuse the statement because of confidentiality duty.

5. PROSPECTIVE

Does professional secrecy tend to be more or less protected?

There is a tradition of protecting professional secrecy in the Czech Republic, however, with respect to money laundering issues and war against terrorism, the state authorities attempt to interfere more with the people's life, including reduction of the scope of confidentiality. There are cases when state authorities (e.g. the Police) did not comply with the rules regarding attorney-client privilege, namely during house/office searches. The Bar protects attorneys at law and protests, usually successfully, against such breaches of the law, which may cause that the Police cannot use certain evidence gained in such an illegal manner.