

Searches of home

and searches of other premises
at which an attorney practises legal profession

Defence lawyer contra Prosecutor?

- ◉ What is the aim of criminal procedure?
 - > Fair punishment of perpetrators
 - > Restriction and prevention
- ◉ But everytime: **FAIR TRIAL!!!**
- ◉ This we have in common

What else do we have in common?

- ◉ In order to achieve our goal, we act in all fairness
- ◉ We stick to ETHICS (ethical rules)
- ◉ We don't want colleagues who don't act according to rules among us
- ◉ Disciplinary procedures
- ◉ Criminal procedure against attorneys and prosecutors who committed a crime

A lawyer's duty of professional secrecy

- ◉ Imposed by the state, therefore generally protected
 - ◉ Basic precondition for the profession of legal aid
 - ◉ It is not a privilege, which should establish an exemption
 - ◉ It serves to protect the clients – part of the right to a fair trial
 - ◉ It must not be misused for committing a crime
- ◉ Resolution of the Constitutional Court, file No. III. ÚS 486/9
 - ◉ Judgment of the Constitutional Court, file No. II. ÚS 2894/08
 - ◉ Judgment of the Constitutional Court, file No. II. ÚS 889/10

Lawyer's ethics

- 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. These rules shall be stipulated by the regulations of the legal profession. § 17 Act on the Legal Profession
- Developed more in Resolution of the board of directors of the Czech Bar Association No. 1/1997 (Code of Conduct) and in Ethical Codex of Lawyers in EU

The aim of the provision § 85b Criminal Procedure Code (hereinafter only „CPC“)

- is to provide the protection to documents, which contain facts covered by the obligation of an attorney to maintain confidentiality and to provide protection to the rights of his clients

- Opinion of the Supreme Court of the Czech Republic Tpjn 306/2014

Premises at which an attorney practises the legal profession

- Any area, which is related to practising legal profession and at which can be found information about clients, whether in writing, electronic or other form.
- Apart from officialy registered office, it can be his filial office, lawyer´s office in the seat of a company to which he provides legal aid, vehicle of a lawyer or the place where the lawyer´s files are archivated or stored.

Premises at which an attorney practises the legal profession

- However, the procedure laid down in § 85b CPC will be applied to other eligible places related to practising legal profession, where information about clients that are affected by the duty of professional secrecy can be stored, processed and used.
- It may be various electronical storage spaces, whether it is the attorney's website, personal storage space of an attorney that is not in the place at which he practises his legal profession or the storages operated by other person, enabling remote access via the internet (various types such as hosting, cloud, server).

Premises at which an attorney practises the legal profession

- ⦿ Attorney's home (dwelling)
 - > Not seen as „other premises“
 - > But falls under regime § 85b CPC if he practices his legal profession there

Documents, which contain facts covered by confidentiality

- These are documents or other information carriers which are covered by the duty of professional secrecy, relation between client and attorney.
- The law protects client, i.e. facts that attorney gets while practicing legal profession in relation to the client.

The nature of documents sought

- ⦿ Documents related to „attorney's criminal activity“
- ⦿ Documents associated with criminal activity committed „detrimental to attorney's clients“
- ⦿ Documents associated with „criminal activity committed in favour of client“

The nature of documents seized

Seizure of computers, relevant equipment and recording media, and copies of them

(Resolution of the Constitutional Court dated 28 March 2002, file No. IV. ÚS 2/02)

- If its not possible to verify the content of the information carriers on the spot and its not possible to separate the part of carriers, then every computer and recording media, which are reasonably expected to contain information important for criminal proceedings, need to be seized and documented.

Standpoint of a representative of the Czech Bar Association

- Standpoint of a representative of the Association must be specified in the search protocol pursuant to § 85 paragraph 3 of the CPC.
- A representative of the Association protects the rights of the third parties within the scope of searches.

A representative of the Association refuses to grand consent

- The refusal to grand consent recorded in search protocol should contain relevant justification /Judgment of the Constitutional Court, file No. III. ÚS 3988/13/
- The documents must be in the presence of the organ conducting the official act, attorney and representative of the Association, safeguarded and handed over to the Association.
- The reasons for which the representative of the Association might refuse to give consent may be reviewed solely by a court /Judgment of the Constitutional Court, file No. II. ÚS 2894/08, Judgment of the Constitutional Court, file No. II. ÚS 889/10/

Bar association returns documents to attorney

- after the term for filing the petition expired
- the petition was rejected in part / the documents, that are concerned in rejection of petition will be returned/
- the petition was fully rejected
- the documents shall be returned without delay

A petition for substitution of consent from a representative of the Association

- comprehensible
- specific

○ contains:

- > identification of documents /Resolution of the Constitutional Court dated 24 March 2014, file No. III. ÚS 3988/13/
- > statement of facts indicating why the submission of consent from a representative of the Association should be made
- > appendix - protocol recording refusal

A petition for substitution of consent from a representative of the Association

Precondition of comprehensibility and specificity

- ◉ The judge is obliged to review the petition, therefore to have the full knowledge of all seized documents, which are proposed to be handed over.

/Judgment of the Constitutional Court, file No. II. ÚS 889/10/

A petition for substitution of consent from a representative of the Association

Precondition of comprehensibility and certainty

- is fulfilled, when the electronic storage of information is submitted to the judge, or in electronic form or in another technical adjustment that enables reviewing
- The petition must contain a sufficient description of facts

A petition for substitution of consent from a representative of the Association

- Description must give a sufficient basis for the suspicion of committing a crime, including explanation, how is the searched area, or persons, related to criminal activity,
- There should also be stated:
 - > which circumstances should be found out from the seized documents (accounting documents, content of electronic data storages etc.)
 - > what should they prove in relation with criminal activity
 - > if the documents concerns just defendent or other people

Petition will not be taken into consideration by a judge – the decision will not be issued if:

- ⦿ Petition is incomprehensible or uncertain
- ⦿ Petition does not contain all necessary requirements
- ⦿ Petition is filed late or by a person who is not entitled to file such a petition

Public court hearing

○ Judge:

- > will impose on Association to submit the documents,
- > will examine, whether there was a breach of documents security
- > will familiarise with the content of documents
- > will grant the petition – document doesn't contain facts covered by the obligation of an attorney to maintain confidentiality
- > will dismiss the petition - document contains facts covered by the obligation of an attorney to maintain confidentiality

Judge will grant the petition

- after the decision has become final the documents are released to the body conducting the search
- the complaint is inadmissible

Judge won't grant the petition

- ⦿ after the decision has become final the documents are returned to Association
- ⦿ the complaint is inadmissible

Thank you for attention.