

ECBA Autumn conference 2015, Luxembourg, 2 - 3 October 2015

Summary of the national report of Miroslav Krutina, Attorney-at-Law in the Czech Republic: protection of attorney's data stored outside of his premises (physical and electronical) and removal of items from the attorney

1. Protection of attorney's data stored outside of his premises (physical and electronical)

The Supreme Court of the Czech Republic clarified in opinion of its criminal college dated 25 June 2015, ref. Tpjn 306/2014, the term "other premises where an attorney performs the advocacy" protected by the confidentiality principle.

The Supreme Court stated that these are any premises which are connected to the performance of advocacy and where is thus information about clients available (in written, electronic or other form). The Supreme Court named examples of such premises in addition to the seat of the attorney: e. g. a local branch of the law firm, a car of the attorney, premises for archiving of attorney's files but also various electronic data storage as websites of the attorney, own data storage of the attorney or storage operated by a third person accessible remotely as e.g. various types of hosting services, clouds, servers.

This last clarification is important as there was recently a medialized case where a lower court stated that hosting services or clouds are not premises of an attorney protected by the confidentiality principle.

2. Removal of items from the attorney

If someone has an item important for the criminal proceedings, he has to submit it to the law enforcement authority when requested to do so. If he does not comply with such request, the item may be removed from him by the police authority.

Such obligation does not arise in case of a document, whose content is protected by the confidentiality principle. However, in 2014 the Constitutional Court has shifted the burden of prove from the state authorities to an individual person as it stated that it us up to the attorney to prove concrete grounds justifying application of the confidentiality principle in relation to the documents concerned.