

LAWYERS' ETHICS BEFORE A CIVIL COURT*

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Abstract: Lawyers' Ethics before a Civil Court

Principles of legal ethics, whether written or unwritten, not only regulate the conduct of legal practice but also reflect the basic assumptions, premises, and methods of the legal system within which the lawyer operates. They also reflect the profession's conception of its own role in the administration of justice. The objective of this paper is to analyse the ethical rules, to define the relationship of a lawyer to the court and his duties in proceedings, competent representation, confidentiality, and personality of the lawyer, and further deal with the legislation contained in the Czech Act on Advocacy and the Code of Conduct.

Keywords: ethics; professional ethics; lawyer; lawyering; civil court; civil proceedings

Klíčová slova: etika; profesní etika; advokát; advokacie; civilní soud; civilní soudní řízení

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1. INTRODUCTION

Lawyers¹ are members of a community consisting of clients, colleagues, opponents, judicial officers, and the public. Each of them is not only a lawyer but also a person, guided not only by professional or legal ethics but also by individual and community concerns and values. The ethics of a lawyer, are principles of conduct that members of the legal profession are expected to observe in their practice.² They are an outgrowth of the development of the legal profession itself. Prior statutes, court rules, and other government directives remain in force along with the profession's self-imposed ethical standards. Together with malpractice actions, they constituted the sum of the restraints placed upon lawyers in regard to their professional conduct. This pattern has continued to the present time.

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¹ For the purpose of this article, the term *lawyer* is used as a member of the Czech Bar Association. The author is aware that this is a general term that can refer to any lawyer, but in the context of the article's focus on Czech law, the terms barrister or solicitor (used in the UK) or attorney (used in the USA) cannot be used.

² SCHILFGAARDE, P. *Law and life: why law?* Switzerland: Springer, 2019, p. 13 et seq.

2. ETHICAL RULES – GENERAL OVERVIEW

Ethics is the philosophical science dealing with moral phenomena in the broadest sense of the word.³ It is the *theory of morality in general and morals* as one of the most critical aspects of human behaviour. As applied to the practice of the law, legal ethics, sometimes known as professional responsibility, is much more specific and codified than the *general conception of ethics*.⁴ Ethical standards in the law guide the behaviour of both lawyers and nonlawyer employees, attempting to assure the public that those working in the law are doing so in an honourable and effective way.⁵ Legal ethics really outline the duties of the members of the legal profession and describes appropriate conduct for those working in the legal profession.⁶ It should be added that sooner or later, the legal profession in various countries has formed a state of advocacy, both to ensure that the independence of the legal profession is obtained or preserved, and to participate in the creation and application of norms of professional ethics, which, in the case of advocacy, is not so firmly defined with legal norms and – for example, in the area of free legal aid – with religious norms.⁷

The first is the principles of *professional conduct*.⁸ A process of becoming a lawyer includes an understanding of, and adherence to, ethical norms and standards.⁹ Lawyers must reflect on, wrestle with, and come to an understanding of the values, norms, and ethics that should be preserved and that shape the judgment and conduct of the lawyer.¹⁰ Starting from the self-evident assumption for a democratic state governed by the rule of law, i.e., that legal norms correspond to the will of the society that created them and that these norms also correspond to its idea of correct behaviour, nevertheless, their observance expresses only a certain *ethical minimum*. Ethical conduct is the law of lawyering, the published rules and regulations that apply to lawyers and the legal profession.

The ethical rules define the lawyer's relationship to social values. This source of ethics for lawyers (apart from their own personal ethics) is general philosophical theories of *social ethics*.¹¹ Social ethics come from a general moral theory of ethical theory, the philosophical work devoted to understanding what it means for something to be good or a duty.¹² Particularly relevant for lawyers are the philosophical ideas about justice, social and environmental responsibility, minimizing harm, and respecting others.¹³

In the Czech context, these rules and regulations can be found in the legal practice or legal profession's statutes, in the various professional associations' self-regulatory

³ See, e.g., texts by the big three of Greek philosophy: Socrates, Plato, and Aristotle.

⁴ LYNTON, J. – LYNDALL, T. *Legal ethics and professional responsibility*. Albany: Delmar Publishers Inc., 1994, p. 8.

⁵ Id.

⁶ Id.

⁷ SOBEK, T. et al. *Právní etika* [Legal ethics]. Praha: Leges, 2019, p. 221.

⁸ PARKER, CH. – EVANS, A. *Inside Lawyers' Ethics*. Cambridge: Cambridge University Press, 2007, p. 3.

⁹ HAYDOCK, R. – SONSTENG, J. et al. *Trial: advocacy before judges, jurors and arbitrators*. 3rd ed. St. Paul: Thomson-West, 2004, p. 19.

¹⁰ Id.

¹¹ PARKER – EVANS, c. d., p. 4.

¹² Id.

¹³ Id.

professional conduct and practice rules and in the way the general law (particularly contract, tort, and equity) applies to lawyers and their relationships with clients. The aim is to create a *minimum moral standard* and prevent a conflict between the expectations of society and the behaviour of lawyers. Ethical principles change over time under the influence of changing legal, economic, political, and other conditions.

Even establishing binding rules of conduct cannot ensure that the rules will be followed. Adherence to ethical standards can only be effective if lawyers personally identify with their mission, accept the ethical norms and standards as their own, and voluntarily assume the responsibility for their behaviour. All these rules should be set clearly and adopted judiciously. Identifying with a profession and accepting its rules is not a short-term process. In this respect, a lawyer must adopt ethical rules from the very beginning of their practice when their adoption is more effective.

From a historical perspective, the legal profession was one of the first professions to systematically start asking questions about ethical standards. In many countries professional associations of lawyers have sought to commit *the principles of ethical conduct to written form*, but *a written code is not essential*. Ethical principles may exist by a common understanding as well as in the literature and writings of the profession. A code, however, makes ethically obligatory principles readily available to the practitioner (and the public) and thus helps to assure wider observance of them.¹⁴

A written code of ethics is a strong tradition of the legal profession, but this is not exclusive to the continental legal system. Sources documenting the existence of legal professional ethics have been preserved in written form since antiquity.¹⁵ According to available sources, a written code of ethics for the legal profession also exists in the Anglo-American legal system.¹⁶ In the United States of America, the first ethical rules for lawyers were created as early as 1908 under the title *Canons of Ethics*, which are, however, the general code of ethics for all legal professions, whereas the legal profession adopts the *Model Professional Rules of Conduct*¹⁷ in the individual states of the United States of America. To this date, all fifty states of the United States of America and the

¹⁴ PIRSIG, M. Legal ethics. In: *Britannica* [online]. [cit. 2021-06-01]. Available at: <https://www.britannica.com/topic/legal-ethics>.

¹⁵ SOBEK, c. d., p. 222.

¹⁶ In democratic countries such as the United States of America, Canada, the member states of the European Union, and Japan, this conception includes the fundamental assumption that the typical lawyer, although principally engaged in the representation of private interests, has a considerable public responsibility as well.

¹⁷ See, e.g., HAYDOCK – SONSTENG, c. d., p. 20, cit.: “*The rules of professional responsibility and state ethical rules provide both a set of disciplinary rules and guidelines for lawyers. Some of the rules deal with the external, objective conduct of a lawyer. Many rules deal with internal, subjective thinking of the lawyer. It is often difficult to apply these rules and guidelines to cases where there are two or more versions of what happened, two opponents who may dislike each other, and two lawyers who are skilled at creating plausible explanations and portraying questionable behaviour as legitimate. Lawyers must develop an internal code of ethics and constantly monitor their own conduct to determine whether it complies with the norms of the profession and their own ethical norms. Every state has rules that establish standards and impose restraints on a lawyer’s behaviour. The Rules of Professional Conduct have been adopted with various modifications by the states. These rules codify norms which reflect the collective views and values of lawyers. State rules of procedure, case law, and local customs and traditions also regulate the conduct of lawyers. The remainder of this section summarizes ethical rules based on the Model Rules of Professional Conduct that specifically apply to lawyers.*”

District of Columbia have adopted this code with some modifications.¹⁸ In England and Wales, the *Code of Conduct of the Bar* for barristers and the *Solicitors' Practice Rules* for solicitors have been adopted.

A Bar Association is responsible for the supervision of compliance with the rules of professional conduct and has partial or total disciplinary authority over those members of the Bar Association who violate the rules. The aim of any rules thus laid down is to oblige the lawyer to behave in accordance with the moral standards (ethical principles) which are considered to be part of the responsible exercise of the profession, and to lead the lawyer to a rightly understood solidarity which upholds the dignity of the profession.¹⁹ The ethical rules are set out in relation to the client, the court, other state authorities, lawyers as colleagues, the legal profession, and the public.

The role of the lawyer in civil proceedings is clarified by legal doctrine and judicial practice. The lawyer acts in the role of a procedural representative who promotes the rights and interests of their client.²⁰ In legal practice, the most common legal representative in civil proceedings is the lawyer, who can only be granted a power of representation for the entire proceeding, i.e. it cannot be limited.²¹ Certain circumstances are relevant in the search for ethical standards, particularly the *lawyer's relationship to the court and their duties in proceedings, competent representation, confidentiality, and personality of the lawyer*.

2.1 THE LAWYER'S RELATIONSHIP TO THE COURT

The lawyer shall treat the court and all authorities with due respect and courtesy. What is proper respect and courtesy? This is always a matter of case-by-case examination.²² A lawyer may commit disrespect not only in active conduct (by being abusive, by addressing a person orally or in a written submission, etc.), but also by being inactive (e.g., failing to respond, failing to appear without excuse at a hearing, etc.).²³ In proceedings, *the lawyer and the judge are colleagues*; the difference between them lies in their procedural status. The variants of behaviour that contradict that model are basically two: the situation where the relationship between lawyer and judge goes beyond the boundaries of collegial friendship, or where hostility arises between lawyer and judge, usually triggered by a failure to follow the law or ethical rules.²⁴ While the lawyer acts as the *alter ego* of the party, the court acts as an impartial entity. As

¹⁸ Alphabetical List of Jurisdictions Adopting Model Rules. In: *American Bar Association* [online]. 28.3.2018 [cit. 2021-06-01]. Available at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/.

¹⁹ A lawyer undertakes to uphold the ethics of the legal profession by taking an oath in the hands of the President of the Chamber, which reads: "*I promise on my honour and conscience to respect the law and ethics of the legal profession and to protect human rights. I promise to observe the duties of confidentiality and to uphold the dignity of the legal profession.*" [see Section 5(1)(i) of Act on Advocacy].

²⁰ JIRSA, J. et al. *Klíč k soudní síni* [The key to the courtroom]. 2. vyd. Praha: Wolters Kluwer ČR, 2018, p. 475 et seq.

²¹ Id.

²² KOVÁŘOVÁ, D. – SOKOL, T. *Etický kodex advokáta: komentář* [Code of ethics for lawyers: commentary]. Praha: Wolters Kluwer ČR, 2019, p. 141.

²³ Id.

²⁴ SOBEK, c. d., p. 229.

a rule, a lawyer does not act in the course of proceedings with the persons conducting the relevant proceedings without the opposing party's knowledge or the opposing party's lawyer if the latter is represented.²⁵

In the relationship between the two professions, the lawyer is an *amicus curiae*, i.e., a friend of the court. Karel Čermák commented that, "[an] *amicus curiae*, however, is not a lawyer who goes out for a beer with the judge and convinces him after the sixth time that the case he represents should be given special priority in the proceedings. Even less is an *amicus curiae* a lawyer who, under the guise of a client's order, burdens the courts and authorities with incompetent and in every respect illiterate oral and written pronouncements without consulting elementary legal regulations, let alone the rules of Czech spelling or at least the vocabulary of the Czech language."²⁶

It is certainly not conceivable that the judge and the lawyer should behave differently before the parties than the procedural rules on the dignity of the trial contemplate. In a democratic rule of law with a developed legal culture, the judge-lawyer relationship is built on collegial cooperation and mutual respect.²⁷ This respect is not only reflected in the relationship with the subjects of the proceedings but is also a sign of respect for the professions, which both should try to instil in the parties and the lawyer in his client.²⁸ A lack of respect for this duty may be perceived by the court as an insulting speech towards the client, for which a fine of up to CZK 50,000 may be imposed [see Section no. 53(1) of the Civil Procedure Code²⁹].

2.2 CONDUCT WITH REGARD TO COURT PROCEEDINGS

Ethical codes generally provide rules for a lawyer's conduct in court proceedings.³⁰ The lawyer shall abide by a client's decisions concerning the *objectives of representation in proceedings*.³¹ The lawyer shall not offer evidence that they know to be false or misleading, nor shall they argue statements, whether in fact or in law, that

²⁵ SVEJKOVSKÝ – MACKOVÁ – VYCHOPEŇ, c. d., p. 288.

²⁶ ČERMÁK, K. *Advokacie a úvahy související* [Advocacy and related considerations]. Praha: Linde, 2000, pp. 41–42.

²⁷ BALÍK, S. *Mutual relations of the lawyer and the judge*. Paper presented at the international conference Current challenges and opportunities of the bars and law societies of the Council of Europe member states, 9 March 2017, Yerevan [online]. [cit. 2021-06-01]. Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Events/20180309_Yerevan/Programme-and-presentations.pdf.

²⁸ See, e.g., the disciplinary decisions of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 101/2015; case No. K 146/07; or case No. K 75/06.

²⁹ Act No. 99/1963 Sb., Civil Procedure Code, as amended.

³⁰ See, e.g., CCBE Rule 4.3 ("A lawyer shall [] maintain [] due respect and courtesy towards the court."); Bar Council of England and Wales, Code of Conduct, Rule 708 ("A barrister when conducting proceedings in Court (a) is personally responsible for the conduct and presentation of his case and must exercise personal judgment upon the substance and purpose of statements made and questions asked[.]"); International Bar Association, International Code of Ethics, Rule 6 ("Lawyers shall always maintain due respect towards the court."); Ethical Code for Italian Lawyers, Article 20 ("In addition to the requirements of any provision of civil or criminal law, a lawyer must, in dealing with lawyers, judges, opposing parties, and third parties, avoid using unsuitable and insulting expressions in court pleadings or documents and in his professional activity in general.").

³¹ HODGES, CH. *Delivering Dispute Resolution: a Holistic Review of Models in England and Wales*. London: Hart Publishing, 2019, p. 33 et seq.

are fictitious, even at the client's behest. Disciplinary decisions do not occur in this area for obvious reasons, as the client himself would have to testify against the lawyer, who demanded the lawyer to lie or present misleading evidence.³²

In legal practice, it is very common to encounter a situation where a client, as a party to the proceedings, takes a negative attitude towards their legal case as well as towards the other parties involved.³³ Such an attitude could not only be counterproductive in a particular court proceeding, but also, if the lawyer also resorts to such an attitude, it would reduce the consistency of the lawyer's status.³⁴ If a lawyer represents a party in a dispute that is related to a matter that they have previously decided as a judge, they are committing an act that undermines the dignity and respectability of the legal profession as well as confidence in the entire judicial system.³⁵

During the proceedings, the lawyer is obliged to draw the party's attention to all legally permissible remedies and instruct him which ones are appropriate to use and which ones are not. The party must submit fully to the lawyer's guidance in the proceedings. Procedural acts will be done vis-à-vis the court by the lawyer; a party should not do such acts on their own without consulting and being advised by the lawyer.

To conclude the judge's quotation, "[the] judge is required to instruct both parties; the lawyer is required to instruct only his client. The judge chooses the course of action leading to the conclusion of the trial, the lawyer advises the client and proceeds in such a way that the court reaches a result beneficial to his client. The judge must be impartial; the lawyer is partisan. The judge makes the decision, the lawyer helps the client and the court to reach a decision that is favorable to the client. Despite these differences, there is no reason for antagonism between these actors in the proceedings. On the contrary, there are many, many reasons for judges and lawyers to be on the best possible terms."³⁶

2.3 CONFIDENTIALITY AND TRUST IN A LAWYER

What a client tells a lawyer and the advice a lawyer renders to a client are *confidential* and may not be revealed unless the client consents or certain situations permit or require disclosure.³⁷ *Trust* is a vague concept, and breaches of trust can occur in many ways that are not specified by the law or the rules of the state.³⁸ An example would be misunderstandings between lawyer and client, different perspectives on how to deal with the matter, etc. In any case, the lawyer is obliged to act in the client's interests according to the client's instructions.³⁹ The lawyer is also obliged to inform the

³² KOVÁŘOVÁ – SOKOL, c. d., p. 145.

³³ MAUR, J. *Výkon advokátní praxe* [Practice of advocacy]. Praha: Wolters Kluwer ČR, 2020, p. 100.

³⁴ Id.

³⁵ Judgment of the Supreme Administrative Court of 13 February 2018, case no. 6 As 120/2018-36.

³⁶ HAYDOCK, R. – KNAPP, P. – JUERGENS, A. – HERR, D. – STEMPEL, J. et al. *Lawyering: practice and planning*. St. Paul: West Publishing, 1996, p. 109.

³⁷ HAYDOCK – SONSTENG, c. d., p. 21.

³⁸ KOVÁŘOVÁ, D. et al. *Zákon o advokacii a stavovské předpisy: komentář* [The advocacy act and the professional regulations: commentary]. Praha: Wolters Kluwer ČR, 2017, p. 319.

³⁹ MOLITERNO, J. – PATON, P. et al. *Global issues in legal ethics*. 2nd ed. St. Paul: West Academic Publishing, 2004, p. 95 et seq.

client of their rights and not perform the requested procedural or other action if it would be contrary to the law, good morals, or professional regulations. The client expresses their trust in the personal qualities, abilities, and skills of the lawyer and in the fact that the lawyer will devote their full attention to their case and that they will not abuse their position to the detriment of their own or other interests.⁴⁰

The issue of trust is also linked to the conduct of the opposing party outside the proceedings. A lawyer should always try to achieve an agreement.⁴¹ The conclusion of an agreement is socially desirable. The lawyer's attempt to reach such a solution requires, of course, the participation of the opposing party. If a lawyer represents the opposing party, then their lawyer must be brought in. Essentially the same applies to written communications.

If the lawyer decides to terminate the relationship because of a *breach of trust*, they must give proper reasons.⁴² When notifying the court of the termination of the representation or requesting the termination of the representation, the lawyer must comply with the duty of confidentiality when formulating their submission (see Section 21 Act on Advocacy⁴³). From this point of view, a simple notification by the lawyer that the representation has ended or that he no longer represents their client is procedurally sufficient.

2.4 THE LAWYER'S PERSONALITY

The lawyer must provide competent representation and act with reasonable promptness and diligence.⁴⁴ Apart from the requirements set out by law for the actual activities of a lawyer [see Section 5(1) Act on Advocacy], specific requirements are also imposed on a lawyer's personality, which are a prerequisite for the proper performance of lawyering.⁴⁵ The lawyer should strive to maintain and strengthen confidence in the judicial system for the protection of rights.

Based on the analysis, certain basic qualities, abilities, and skills that a lawyer should have and that are desirable for the proper performance of their role can be identified.⁴⁶ *The acceptable characteristics are:*

- high professional ethics,
- high intellect, intellectual maturity,
- balanced mental structure, insight,
- communication, assertiveness,
- trustworthiness, discretion, helpfulness,
- compliance with ethical rules.

⁴⁰ LEAL, H. et al. *Introduction to Advocacy: Research, Writing and Argument*. 6th ed. New York: The Foundation Press, 1996, p. 12 et seq.

⁴¹ HAYDOCK – KNAPP – JUERGENS – HERR – STEMPEL, c. d., p. 124 et seq.

⁴² MAUR, c. d., p. 140.

⁴³ Act No. 85/1996 Sb., on Advocacy, as amended.

⁴⁴ See, e.g., HAYDOCK – SONSTENG, c. d., p. 21, cit.: “*Competent representation minimally consists of legal knowledge, thorough preparation, and effective presentation of the case. The lawyer must render candid advice to the client and exercise independent, professional judgment.*”

⁴⁵ JIRSA, c. d., pp. 470–471.

⁴⁶ See, e.g., DARE, T. *The counsel of rogues? A defence of the standard Conception of the lawyer's role*. Farnham: Ashgate Publishing Limited, 2009, pp. 1–14.

On the other hand, it is possible to list *the unacceptable qualities*:

- unfair and dishonest behaviour, disrespect for rules,
- below average intellect, mechanical acts,
- tendency to succumb to emotions and tendency to act effectively,
- closed-mindedness, aggressiveness,
- distrust, indiscretion, reluctance,
- harmful speech, rudeness, vulgarity, condescension and arrogance.

Lawyers cannot do without desirable qualities in their work.⁴⁷ A lawyer must make reasonable efforts, consistent with the legitimate interests of a client, to expedite a trial and not delay proceedings for improper reasons.

3. ACT ON ADVOCACY

In the continental legal system, the rule is to directly set the standards of legal ethics into law. In the Czech law, there are some ethical rules also contained in the law – in the *Act on Advocacy*. The central and discussed principles will be listed below; a more detailed analysis would certainly go beyond its scope. Some ethical standards are then set out in the *Code of Conduct*.

The lawyer is mainly obliged *to protect and promote the rights and legitimate interests of the client and to follow the client's instructions*. However, the lawyer is not bound by the client's instructions if they are contrary to a legal or professional regulation; the lawyer must inform the client accordingly [see Section 16(1) Act on Advocacy]. Even when the instruction is manifestly impractical, the lawyer must follow it if the client insists on it. Clients have the right to legal advice and representation in proceedings before courts and other authorities and the right to have the lawyer communicate with persons whose interests' conflict with those of a party and facilitate the amicable resolution of a dispute.⁴⁸ The lawyer is also obliged to exercise the necessary procedural prudence and arrange their activities so that the rights and legitimate interests are not endangered.

The lawyer is also obliged *to act honestly and conscientiously*; they are obliged to make consistent use of all legal means and, within their framework, to apply them in the interest of the client and everything they consider beneficial [see Section 16(2) Act on Advocacy]. For example, every lawyer should warn their client in due time about the probable hopelessness of a legal dispute or its continuation (appeal proceedings, etc.). In practice, it may be problematic to prioritize the client's interests over the lawyer's economic interests. If the court agrees with or accepts the lawyer's opinion and the lawyer's conduct, this does not necessarily mean that the lawyer has made all the efforts that can be required of them, that they have used all legal means and everything beneficial to the party.

The lawyer shall act in legal practice so as not to undermine the dignity of the legal profession; to this end, they shall, in particular, observe the rules of professional ethics

⁴⁷ MOLITERNO, J. et al. *Ethics of the lawyer's work*. 2nd ed. St. Paul: Thomson-West, 2003, p. 5 et seq.

⁴⁸ *Id.*

and the rules of competition. The *Professional Rules of Conduct* and the *Rules of Competition* shall be laid down by statute (see Section 17 Act on Advocacy).⁴⁹ Lawyers are obliged to behave in a manner that does not bring the Bar Association into disrepute. This obligation is imposed on lawyers when representing themselves before courts and other authorities and applies to their conduct in everyday life. A lawyer should at all times bear in mind and assume that their improper conduct may damage the reputation and dignity of the legal profession as a whole, especially when acting as a representative in court proceedings. For example, it is a serious breach of such duties for a lawyer to use an unauthorised academic title in front of their name.⁵⁰

To make lawyers even more aware of their role in the civil proceedings and the importance of their position before the court, the obligation to *wear the robe*, which lawyers were entitled to wear until 1948, was reintroduced. The reintroduction of gowns has been subject to review by the courts, and the Constitutional Court has even commented on the matter.⁵¹ In civil court proceedings, this obligation is applied only in proceedings before the Supreme Court (see Section 17a Act on Advocacy). In many foreign countries the gown is quite common. The option of wearing a gown is, among other things, regarded as an expression of belonging to the state, expressed not only when attending court but also on various ceremonial occasions.⁵² The introduction of the gown in this country may be a good step towards making the trial, as a whole, more representative.

A lawyer is bound *to maintain the confidentiality* of all facts of which they become aware of in connection with the provision of legal services⁵³ [see Section 21(1) Act on Advocacy].⁵⁴ Only the client and, after their death or dissolution, their successor in title may release the lawyer from the obligation of confidentiality. If there are several legal successors, the consent of all must be obtained. The law obligatorily requires a written form of consent, in court proceedings this can also be done orally on the record.

The duty of confidentiality is breached⁵⁵ in relation to a person entrusted by a lawyer with the performance of a legal service act, if that person is themselves obliged to maintain confidentiality [see Section 21(3) Act on Advocacy], as well as in other cases specified by law (in court proceedings in a dispute between the lawyer and their client, in a dispute between the lawyer and the Bar Association, just as the duty of confidentiality does not affect the duty imposed by law to prevent the commission of a criminal offence (see

⁴⁹ See Resolution on the Board of Directors of the Czech Bar Association No. 1/1997 of the Official Journal of the Bar, which determines the Rules of Professional Conduct and the Rules of Competition of Lawyers of the Czech Republic (Code of Conduct).

⁵⁰ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 75/03.

⁵¹ Resolution of the Constitutional Court of 6 January 2010, case No. IV. ÚS 2457/09.

⁵² KOVÁŘOVÁ – SOKOL, *c. d.*, p. 146.

⁵³ See, e.g., HAYDOCK – SONSTENG, *c. d.*, p. 21, cit.: “*What a client tells a lawyer and the advice a lawyer renders to a client is confidential and may not be revealed unless the client contests, or certain situations permit or require disclosure. The factual story a client tells a lawyer is disclosed when the client testifies at a deposition, a hearing, or at trial. The legal theories discussed between the client and the lawyer often form the basis for the theory of the case which is presented at the trial or hearing.*”

⁵⁴ SMEJKAL, V. Povinnost mlčenlivosti advokáta a elektronická komunikace [The lawyer’s confidentiality obligation and electronic communication]. *Bulletin advokacie*. 2007, No. 10, pp. 17–22.

⁵⁵ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 4/98.

Section 367 of the Criminal Code⁵⁶). On the other hand, a lawyer is obliged to maintain secrecy about a completed criminal offence [see Section 368(3) of the Criminal Code]. In addition, under the conditions set out in the Criminal Code, calls between clients and their lawyers may be intercepted. The professional secrecy does not prevent the recording and transcription of lawfully intercepted communications between a lawyer and their client where the content of the communication gives rise to a presumption that the lawyer has participated in criminal activity and provided that the client's right to defence is not affected.⁵⁷

4. CODE OF CONDUCT

Principles of legal ethics, whether written or unwritten, not only regulate the conduct of legal practice but also reflect the basic assumptions, premises, and methods of the legal system within which the lawyer operates.

A more general scope and importance of ethical standards of conduct and behaviour of lawyers in relation to the court are expressed at the European level by the *Code of Conduct for Lawyers of the European Union (CCBE)*.⁵⁸ It was originally adopted at the plenary session of 28 October 1988 and subsequently amended several times during the CCBE plenary sessions. For the sake of completeness, the *Charter of Fundamental Principles of European Advocacy*, which was adopted by the CCBE plenary session in 2006, is also worth mentioning.⁵⁹ The Charter includes a list of fundamental principles that are common to national and international rules governing advocacy. The Code and the Charter thus form the basis of the deontology of the *European Bar Association*.

Under the Czech law, article 17 of the Code of Conduct lays down the *rules of conduct before the court*. It sets out the obligation to conduct the proceedings honestly, the obligation to defend the interests of the client with all respect and courtesy towards the court honestly and without fear, without regard to one's own interests or the consequences for oneself or any other person, the prohibition of knowingly presenting false or misleading information, and finally, the extension of the rules governing the lawyer's relationship with the courts, to arbitration bodies, or other persons performing judicial or quasi-judicial functions.

The relationship of a lawyer as a representative of a party to proceedings has traditionally been governed by procedural rules. In some jurisdictions, we can find the regulation of the mutual respect and deference of *lawyers towards the court* directly in the procedural rules (e.g., Section 429 of the Civil Procedure Code of the Kingdom of Belgium), elsewhere it is an ethical rule.⁶⁰

⁵⁶ Act No. 40/2009 Sb., Criminal Code, as amended.

⁵⁷ See, e.g., judgment of the European Court of Human Rights of 16 June 2016, Application No. 49176/11, Versini-Campinchi and Crasnianski v. France.

⁵⁸ Alphabetical List of Jurisdictions Adopting Model Rules. In: *American Bar Association* [online]. 28.3.2018 [cit. 2021-06-01]. Available at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/.

⁵⁹ SVEJKOVSKÝ, J. – MACKOVÁ, A. – VYCHOPEN, M. et al. *Advokátní právo* [Advocacy]. Praha: C. H. Beck, 2017, p. 133.

⁶⁰ MACKOVÁ, A. *Právní pomoc a její dostupnost* [Legal assistance of lawyers and its availability]. Praha: C. H. Beck, 2001, p. 53.

4.1 PROFESSIONAL RULES OF CONDUCT

The lawyer shall generally be obliged by their *honest, honourable, and decent conduct* to contribute to the dignity and stature of the legal profession [see Article 4(1) Code of Conduct]. The lawyer's behaviour in connection with the legal practice shall be material, sober, and not intentionally false [see Article 4(3) Code of Conduct]. A violation of dignity is understood to include not only offensive verbal expressions during a court hearing, ignoring the court's requests, failure to fulfil an undertaking given by a lawyer in connection with professional misconduct, as well as a whole range of other acts and conduct of a lawyer giving rise to their disciplinary liability.

When dealing with a case, the lawyer shall be obliged to duly inform their client of the progress in the settlement of their case and provide them with a prompt explanation and background documents necessary for considering further orders [see Article 9(1) Code of Conduct]. In legal practice, a lawyer is obliged to keep his client informed in detail about the course of the legal proceedings and to be in regular contact with the client.⁶¹ A lawyer would also be guilty of a disciplinary charge if he provides incomplete, inaccurate or even false information to their client.⁶²

To fulfil the purpose of the civil proceedings, the lawyer shall always strive to find the most financially effective *settlement of a dispute*. Depending on the circumstances of the case, they shall, at the appropriate moment, recommend an attempt for an out-of-court settlement in arbitral proceedings to the client [see Article 10(8) Code of Conduct]. Fortunately, this issue can be concluded by summarizing that neither disciplinary proceedings nor client complaints focus on this area.

In proceedings *before the court*, the lawyer's duties are regulated in Article 17 of the Code of Conduct. The lawyer is obliged to maintain proper respect and courtesy. This includes all written and unwritten rules, not only related to addressing such persons, but to observing certain formalities in appearing before the court, to respecting orders and prohibitions in the conduct of proceedings, to dressing decently, and generally to observing decorum, whether it relates to greetings, introductions, giving precedence, or any other requirements of respect and courtesy. It would be a violation of the *Rules of Professional Conduct* to make disparaging statements to the court or another lawyer without specific and demonstrable knowledge,⁶³ nor shall any lawyer make disparaging statements to opposing party.⁶⁴ Derogatory statements about a judicial decision are also a violation of professional ethics.

A specific duty is imposed on the lawyer in connection with the facts they are alleged to prove. Such information must *not be false or misleading*, even at the client's behest. The falsity of the information must not be known. This applies not only to the

⁶¹ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 403/98.

⁶² See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 97/05.

⁶³ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 21/98.

⁶⁴ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 10/98.

facts but to any information which may significantly affect the legal assessment of the case. Typical examples are a misrepresentation of the content of legislation, quotation of non-existent case law, or literature.⁶⁵ The same applies to misleading information, i.e., information which is capable of misleading the court.⁶⁶ Similar strict rules for the conduct of lawyers are contained in the rules of courts of all developed countries, with particular emphasis in countries in the Anglo-American legal system.

The lawyer is also obliged to act *fairly in the proceedings* and to respect the legal rights of the other parties. Honesty is understood here not only in relation to acting in accordance with the law and the rules of the law of the land but also in terms of being of a sound conscience in terms of justice, civil and human rights, and equal access⁶⁷ to justice. Particularly dangerous are situations in which opposing counsel's practices are coupled with the promise of benefits in an attempt to influence the court's decision.

4.2 RULES OF COMPETITION

The *Rules of Competition* are, to some extent, related to the previous group of *Professional Rules of Conduct*, but they must nevertheless be mentioned briefly. Lawyers, as members of the profession, are at a considerable disadvantage compared with other businessmen, since they are largely restricted in the promotion of their services, let alone their qualities. The rules governing the competition of lawyers vary from general rules to very specific formal rules (see Articles 19 to 32 of the Code of Conduct).

The publicity, advertising, and marketing of lawyers have their limits. These are legitimate requirements not just due to tradition. In general, any form of advertising that would lower the dignity and respectability of the legal profession is prohibited.⁶⁸ A client should be convinced of a lawyer's abilities by the professional quality, integrity, and moral values of the lawyer, not by advertising. The personal publicity of a lawyer is permitted if certain conditions are met – information about the lawyer's services must be accurate, not misleading, respect the duty of confidentiality, and other core values of the legal profession. However, traditional methods of publicity and contemporary trends raise new questions.⁶⁹ In the course of a competition, a lawyer is required to comply with competition regulations⁷⁰ and may not, for example, *eo ipso* accept or offer remuneration.

⁶⁵ Decision of the Constitutional Court of 17 August 2018, case No. II. ÚS 644/18.

⁶⁶ RUBEŠ, J. O některých etických zásadách každodenní práce soudce a advokáta [On some ethical principles of everyday work of a judge and a lawyer]. *Bulletin advokacie*. 2003, No. 11–12, pp. 19–30.

⁶⁷ The term “*equality of arms*” was first used by the European Commission of Human Rights (‘the Commission’) in its report of 28 March 1963 in Pataki v. Austria. Subsequently, the term became commonly used in the decision-making practice of both the Commission and the European Court of Human Rights in Strasbourg. The Court first expressed this term in Neumeister v. Austria, 1968, and in 1970 in Delcourt v. Belgium or Borgers v. Belgium, 1986.

⁶⁸ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 24/99.

⁶⁹ See, e.g., the disciplinary decision of the Disciplinary Chamber of the Disciplinary Committee of the Bar Association, case No. K 116/2011.

⁷⁰ Act No. 143/2001 Sb., on the protection of competition and on the amendment of certain acts (Act on the protection of competition), as amended.

neration for recommending or arranging legal services.⁷¹ However, there is a visible effort from the ranks of lawyers to change this concept.

The regulation of *lawyer competition rules* faces two fundamental problems: *fair client acquisition* and *adequate publicity for legal services*. Although different approaches can be observed, one starting point remains – *competition must be fair*.

5. CONCLUSION

A lawyer, as a representative of a party before a civil court, is obliged not only to follow the procedure set out in the procedural rules but is also bound by professional ethics. Ethical rules are currently regulated in the legal regulations and the Bar Association's professional rules. However, it should also be noted that there is a difference between formal written rules for lawyers (e.g. to wear a gown) and a general or philosophical conception of ethics. Some formal rules are ethically irrelevant, just as, for example, the rule that a lawyer follows the client's instructions is a legal rule, but has nothing to do with ethics. Therefore, on the basis of their analysis, the following can be closed:

- a lawyer is obliged to maintain *proper respect and courtesy* towards the civil court as well as towards persons performing their tasks; however, the relationship between the lawyer and the court is bilateral, i.e. the judge is also expected to comply with ethical rules;
- a lawyer shall *act fairly in the proceedings* and *respect the legal rights of the other parties*; if the opposing party is represented by a lawyer, the lawyer shall always act with that lawyer;
- a lawyer shall *not make false or misleading statements* in civil proceedings, or *offer such evidence*, even at the client's behest;
- a lawyer is also obliged to *observe other special rules of conduct* if they are customary for proceedings before the civil court, e.g. to wear formal clothes during the court proceedings, or to wear a gown before the Supreme Court, proper address etc.

A review of lawyer disciplinary cases reveals that common reasons for lawyer malfeasance result from greed, alcohol or drug abuse, laziness, and legal incompetence. Many lawyers who operate dysfunctionally will do so until they are caught, and do not stop because of a code of external or internal ethics. A client, partner, friend, or family member may be the person or persons who get them help.⁷²

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⁷¹ MAUR, *c. d.*, p. 78.

⁷² HAYDOCK – SONSTENG, *c. d.*, p. 23.