

Difficulties in balancing the freedom of expression and right to privacy in the Czech Republic

The freedom of expression and freedom of the press has been challenged recently by an act amending the Code of Penal Procedure, the Penal Code and the Act on Personal Data Protection. The act as originally proposed by the government aimed to strengthen the protection of privacy of crime victims, especially children and victims of sexual crimes and crimes against dignity of the victim as rape or human trafficking, but also e.g. murder or manslaughter. The victim ought to be protected against disclosing or publishing any of his/her personal data or information during the criminal prosecution, the court procedure and afterwards. The ban was directed to prosecution bodies as well as any private person who might obtain any personal information about the victim. Generally the way to lawfully obtain information about criminal proceedings should be via the prosecution body who gives official information about facts and people involved in crimes to other bodies and authorities involved for their need or to the general public with the respect to the privacy of persons concerned, the presumption of innocence and special attention to children and minors.¹ Any disclosure or publication was to be punished as unlawful publication of personal data with the fine up to 1 million CZK (ca 40 000 Euro). The only exemptions were the consent of the person concerned (or his/her legal guardian) and the need of the criminal prosecution or investigation (included the investigation of missing persons).

During the debates in the Chamber of Deputies and its committees, the act has been considerably changed and amended. Apart to the victims, the disclosure ban was extended to crime suspects, witnesses and other categories of private person connected with the prosecution of crimes. The rules were also tightened as to the information on criminal trials and criminal judgements. In addition, a special publication ban was introduced on information obtained from wiretapping in the criminal prosecution. The fines were increased up to 5 mil CZK (ca 200 000 Euro) for publishing the personal information in the media and also a possibility of criminal prosecution was introduced with punishment up to 5 year imprisonment. Despite partial opposition of the Senate, the act was adopted and is in force since April 1st 2009. Czech journalists gave it the nickname "Muzzle Act"

The problem of the law is its restrictive nature towards the freedom of expression and of dissemination of information, which can be limited only in cases "necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (Art.10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, similar Art. 17 of the Czech Charter of Fundamental Rights and Liberties)

As clearly visible, the Act aims to limit the freedom of expression for the protection of the reputation of others and their right for respect of privacy. However, these two rights, being of equal constitutional value, have to be compared and weight against one another according to the

¹ Minors as criminals are protected by a special Act on Juvenile Criminal Justice and their identity shall not be disclosed during the prosecution, the trial and afterwards. The proposed Act aimed at introducing the same protection for child crime victims.

circumstances of the concrete case and then there can be established which one prevails over the other. The act gives automatically precedence to the right of privacy. But not each person's interest privacy prevails over the right and interest of the general public to communicate and receive information, especially if the person concerned is a public person, e.g. a person holding a public post or exercising public duty or anyhow appearing openly in public. As the jurisprudence of the Czech Constitutional Court and the European Court of Human Rights show, the liberty of press is of utmost importance for the democratic society and media need to be able to exercise their role of a "watch-dog", especially in matters of public concern as affairs of state or public policy. Limits of the freedom of expression in these cases have to be examined very strictly as to their necessity and proportionality. Generally, the distribution of true, objective and verified information in affairs of public interest shall not be restricted. Specially should be noted, that the restriction extends automatically also to persons suspected of crimes and that an information of suspicion, published even with the accordance with the presumption of innocence, constitutes breach of the act. As the jurisprudence also points out, the public has the right to exercise control over their public officials and also to know information that may influence their performance in this function and consequently the diffusion of such information shall not be limited.

In reaction, the Czech Minister for Human Rights prepared an amending act to address the above mentioned issues. In the Code of Penal Procedure through this amendment, the protection would be limited again only to crime victims – all minor crime victims and victims of selected crimes as murder, manslaughter, torture, human trafficking, maltreatment, sexual crimes or stalking. Other persons involved in criminal procedure are sufficiently protected by special measures (e.g. special protection of endangered witnesses) or by general civil law protection of personal reputation. As the protection of adult victims includes also victims of murder and other offences, where the right to privacy does not necessarily prevail over the freedom of expression, there are some exceptions from the prohibition of disclosure. The exemptions from prohibition are the consent of the victim (including minors and deceased persons) and the need for criminal prosecution and investigation or other public interest prevailing over the interest of protecting the person's privacy. The fines for disclosure would be lowered to CZK 200 000 (ca. 8 000 Euro) and CZK 1 million (ca 40 000 Euro) respectively.

The amendment is now being debated in the Chamber of Deputies of the Czech Parliament and once adopted should re-establish the sensitive balance between freedom of expression and right to privacy.