

# **THE EXCURSION INTO SPANISH LEGAL REGULATION OF ADVOCACY**

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## **Key words**

Spain, history, valid legal regulation, the organisation of advocacy, the conditions for providing legal services, the manners of exercise of legal counsel, the rights and liabilities of attorney-at-law, the disciplinary liability.

## **1. Introduction**

The paper is devoted to the excursion into the legal regulation of advocacy in Spain. Czech and Spanish legal regulation of advocacy has common features but we can find dissimilarities, too. The main attempt of this work is describing and comparing Spanish advocacy with the Czech one.

## **2. History**

Spanish advocacy as well as Czech advocacy went through the rich history and its roots date back to the Middle Ages. The first important source of law in this scope is an act called “De avocatis” that was passed in 1247. During several centuries the Spanish advocacy became an independent and liberal profession. Nowadays the number of its members is increasing rapidly and the quality of provided legal services is improving.

## **3. The concurrent legal regulation of Spanish advocacy**

The concurrent status of advocacy is regulated in “Ley 2/1994 de febrero de Colegios Profesionales” and in “Estatuto General de la Abogacía Española” which is the fundamental

legislation in Spanish advocacy. In Spain the advocacy is regarded as acknowledged and reputable profession.

### **Organisation of Spanish advocacy**

The self-administration in organisation of advocacy is common for both countries, but the internal organisation itself is rather different. In the Czech Republic there is only one bar association (“Czech Bar association”) but in Spain there are several bar associations. “Consejo General de la Abogacía Española” has the national competence and its registration office is in Madrid. It is the public entity with the legal identity. The executive authorities are the general assembly (“El pleno del Consejo General”), permanent committee (“La Comisión Permanente”) and president (“El Presidente”). In every province there is at least one local bar association. The membership for individual attorneys-at-law is obligatory. Each member has its own title, e.g. “ilustre”, “ilustrísimo señor”, “excelentísimo señor”, etc. and they have the right to wear a gown, insignias and other attributions of their function. The main functions of these authorities are similar but wider than the functions of the Czech Bar association. The paper is also concerned with particular local authorities in the comparison with the Czech organisation of advocacy.

### **The conditions for providing legal services and manners of exercising legal counsel**

The conditions for providing legal services are exactly the same as in the Czech Republic – lawful age, legal capacity, citizenship of a country, EU or EHS, academic title, being without criminal records, etc. Spanish attorney-at-law can exercise legal counsel not only individually but also in association and as an “employed attorney-at-law”. The speciality of Spanish legal regulation, that has not analogy in Czech Republic, is so-called multidisciplinary cooperation. It is an institute which enables attorneys-at-law to associate with other professionals in whatever legal form including a company. They can provide not only legal but also other special services by this way. The attorney-at-law who exercises legal counsel in association cannot exercise it individually at the same time.

### **The rights and liabilities**

Spanish as well as Czech advocacy has strong tradition of codified rules of the rights and liabilities of the members of this profession. The issue is regulated in an analogy of our ethics code, and that is “Código Deontológico de la Abogacía Española”. In this code the rights and liabilities are divided in the same way as in our country – attorney-at-law must follow them towards the legal profession, paralegals, client, court of law and other authorities. Spanish attorney-at-law has the right to all honours traditionally connected with advocacy. If he thinks these honours are broken he can make a complaint to a court of law. The attorney-at-law is also obliged to notify all cases of illegal and incompetent manner of legal counsel. In connection with trial the attorney-at-law is obliged to be attire in toga eventually barret without distinction excepting symbol of appropriate association. In a court room the attorneys-at-law sit in the middle at the same level as a tribunal. During a trial they represent Ministry of Justice and Spanish advocacy. In a court they even have their own designated places for discharging of office.

The paper also deals with the problem of publicity and advertising that was liberalised in 1998. The advertisement itself is allowed except of the explicitly prohibited forms. It must be reasonable and contains true and disinterested information. The matter of interest in Spanish advocacy is the competence of the president of particular association to make control in an office of any attorney-at-law. The main reason is to find out whether the rules and acts are observed.

### **Disciplinary liability of an attorney-at-law**

The attorneys-at-law are accountable for any disciplinary misconduct and they may be penalised in disciplinary proceeding. The disciplinary liability is inherent beside “Estatuto General de la Abogacía Española” also in “Reglamento de procedimiento disciplinario” – the analogy of our “Disciplinary order of Legal counsel.” “Estatuto General de la Abogacía Española” differentiates between grave, less grave and slight offences. According to the type of offence there are sanctions that are oral or written admonition, temporary prohibition of legal counsel and disbarment. The public admonition and financial penalties used in the Czech Republic are not known in Spain. The attorneys-at-law may appeal against verdict of the disciplinary proceeding to “Consejo General” or to the relevant administrative court. There is also the disciplinary competence of the administrative court and its sanction are written in personal profile of an attorney-at-law.

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