

IPI Interviews Czech Human Rights Minister Michael Kocab

This interview was conducted via email in Vienna and Prague on 12 October 2009.

Emphasis on certain words by Minister Michael Kocab.

***IPI:** Earlier this year, parliament passed the so-called "wiretapping law", which deals with police wiretaps, and also with the disclosure of information from certain types of crimes. Many representatives from the Czech media were worried about the effect of these provisions. In your opinion, is the new law problematic, and how so?*

Michael Kocab: The primary goal of the original government amendment to the Rules of Criminal Procedure and other laws was in accordance with international trends to provide greater protection for individuals and the privacy of crime victims in relation to their age or the nature of the crime committed. The aggrieved person is frequently secondarily victimised (the victim of a crime then becomes the victim of an investigation) when the media handle the



case in a thoughtless way, when detailed information relating to the victim, his family and his privacy is revealed. The victim of a crime must then deal not only with the effects of the crime, but also with the unfavourable impacts of increased public interest in "their case," during which further harm to the victim occurs.

During discussion in the Chamber of Deputies, however, the government proposal was expanded in a way that cast doubt on its conformity with the constitutional order of the Czech Republic and with the Convention on the Protection of Human Rights and Fundamental Freedoms, including the judicature connected with it, especially regarding the threat of criminal prosecution for breaching a ban on publishing, which is disproportionately strict.

IPI: Since coming into force on 1 April 2009, do you think that the law has had a chilling effect on reporting? Do you believe the law will lead to greater self-censorship in the media?

MK: That cannot be seen, because we will not know about cases where the media, under threat of disproportionate sanctions stemming from the "wiretapping law," decided not to report.

In the wording of Chamber of Deputies' amendment, the wiretapping law in its essence is certainly contributing to the rise of "self-censorship." This is why it is necessary to amend the law.

IPI: What is the background history of your proposed amendment that will be presented to the lower house in the next few weeks? Who contributed to this proposal?

MK: I reacted to an impetus from the wider community of journalists and workers in the media sphere, who met with Prime Minister Fischer and myself.

I have repeatedly met with journalists' representatives and their lawyers over their requests and have also held meetings with experts from the interior and justice ministries and the Office for Personal Data Protection and the Law Faculty of Charles University.

On the basis of these meetings, amendments to the Criminal Procedure, Penal Code and Personal Data Protection Law emerged which evenly balance between the right to privacy and freedom of speech.

I presented the proposal to the government on Wednesday 26 August 2009, and the government approved the proposal. In the submitting report, I proposed that in consideration of the early elections to the Parliament (according to § 90, article 2, of the rules of order of the Chamber of Deputies), that the proposal be passed in its first reading, which was rejected by the Parliament. Now that early elections have been cancelled, the proposal should be thoroughly discussed by the Parliament.

IPI: The International Press Institute believes that if the wiretapping law is not repealed, it is important that a public interest exception is added to the act, with a broad definition of the "public interest", so that journalists can report on public officials and government activities. Under your proposed amendment, what aspects of the law would be changed?

MK: The goal of the proposal is to create a more balanced modification in the conflict between two basic rights – freedom of information and the right to privacy. Its goal is to concentrate on the protection of truly

needy persons and to limit the bans which were too categorical in the previous amendment.

For this reason, **the circle of crimes - whose victims are over the age of 18, and whose personal information was protected against publishing**, especially for crimes of a sexual nature, crimes against human dignity and crimes deeply affecting the lives of the victims and those close to them – was limited.

For publication (including wiretaps) aside from exceptions for the purposes of criminal or other hearings, there is an exception for reasons of **the public interest** if this outweighs the right of the affected person to protect their privacy.

In the Penal Code, there is a proposal to **omit negligence of the facts for the crime in the unauthorized handling of personal information** stemming from the conduct of public authority.

Finally, we propose to **decrease fines** for individuals for overstepping the aforementioned ban in the personal data protection law to CZK 200,000 from CZK 1,000,000.

IPI: What are some of the strengths of the Czech press freedom climate, and what are some of the challenges the media faces?

Especially in a situation of a young democracy, where the role of the free media and also the role of politicians in the context of morals and responsibility for public issues is not entirely clear and experienced, I consider the protection of privacy to be an important victory for freedom.

On the other hand, I consider the right of the public to information, especially in the activities of leading politicians, as well as administrative, investigative and judicial bodies in criminal hearings equally important.

Article 17, Section 4 of the Charter of Fundamental Rights and Freedoms teaches us that *"The freedom of expression and the right to seek information may be limited by law in the case of measures essential in a democratic society for protecting the rights and freedoms of others, the security of the state, public security, public health, and morality."*

At the same time, the judicature of the European Court for Human Rights periodically says that:

- The media fulfils the function of a "watchdog" in a democratic society by informing the public and public at the same time has the right to receive the information, or that

- Freedom of speech can be limited for reasons presented in Article 10 of the Charter (which is, for example, the protection of one's good reputation from someone else) must be narrowly interpreted and the necessity of each limitation must be convincing.

I consider transparency in the conduct of public authority to be a key value and limiting of the media in such a way as the Parliament amended it to be an unacceptable interference in their affairs; one can recall the role of the media (Carl Bernstein and Bob Woodward of the Washington Post) in the Watergate scandal, the role of Der Spiegel in scandals in German politics and also the role of our media in the role of the so-called Justice Mafia, or recently in the scandal at the Pilsen Law Faculty, etc.

