CHAPTER 10

The Different Roles of the Czech Legal Adviser: From a Watchdog to a Headhunter

Petr Válek*

I Introduction

During my studies at the University of Michigan Law School in Ann Arbor, Judge Bruno Simma recommended that I read a novel Professor Martens’ Departure, excellently written by the Estonian author Jaan Kross. The main character of this book is the famous international law expert, Professor Friedrich Fromhold Martens, who was – what we would call today – the Russian Legal Adviser in international law. On the way from his home town Pärnu to St. Petersburg, he recalls the defining moments of his life. At the end of the novel (just shortly before his death), in a restaurant at a train station, Professor Martens engages in a dialogue with a waiter and realizes that his professional career has not been much different from the one of the waiter: that he has just served the powerful and told them what they wanted to hear. At this point, he admits: ‘And I have done the same thing, all my life’.1

In this chapter, I will not attempt to argue against Jaan Kross’s rather critical appraisal of the Legal Adviser’s role within a foreign ministry. After all, I have been in my current position for just over three years so it would be premature for me to make such sweeping conclusions. Nevertheless, while explaining the responsibilities of the Czech Legal Adviser in international law, I will also seek to address some of the current challenges that can be similar to those faced by Professor Martens. In order to achieve this aim, it is necessary to describe first the framework in which the Czech Legal Adviser operates, ie, the structure of the Ministry of Foreign Affairs of the Czech Republic (hereinafter the “MFA”).

The MFA is divided into sections, departments and units. Each section is headed by a deputy minister, a civil servant who reports directly to the foreign minister. There are six deputy ministers, who can be best compared to

* Director of the International Law Department, Ministry of Foreign Affairs, Czech Republic. The opinions expressed in this article are solely those of the author and do not necessarily correspond with the official position of the Ministry of Foreign Affairs of the Czech Republic and do not bind this institution in any way.

1 J Kross, Professor Martens’ Departure (The New Press 1994) 278.
the directors-general in other countries. One of these deputy ministers is in charge of the Legal and Consular Section – currently Dr Martin Smolek – who concurrently serves as the agent of the Czech government before the Court of Justice of the European Union (CJEU). He is, therefore, the principal Legal Adviser at the MFA covering all legal issues. In addition, under the new Act on State Service (No 234/2014 of the Official Gazette, as amended), every minister is entitled to appoint up to two deputy ministers, who are political appointees. These “political” deputy ministers, however, are not assigned to a particular section.

Within the Legal and Consular Section, there are five departments: the Legislative Department, the Department for Consular Matters (responsible for the traditional consular agenda), the Department for Consular Conceptions and Methodology (dealing with the visa policy), the EU Law Department and, finally, the International Law Department. I hold the position of Director of the International Law Department (in Czech: ředitel Mezinárodněprávního odboru) which went through frequent organisational changes and has been part of the MFA since the establishment of Czechoslovakia in 1918. In substance, my position corresponds cum grano salis with the term ‘legal adviser in international law’ contained in the title of this chapter. The department is staffed with 11 lawyers and 4 administrative officers who are further divided into three units: the Public International Law Unit, the Treaty Law Unit and the Unit for International Legal Documentation. It goes without saying that no Legal Adviser can ever successfully meet the tasks coming from the foreign ministry’s leadership without his team’s support. In this respect, I have been very fortunate.

The legal community outside the MFA sometimes believes that the core responsibilities of a Legal Adviser in international law involve, primarily, providing legal advice to the foreign minister and the government on the legality of the use of force (ius ad bellum) and on other issues that make the headlines in the media. Although answering the questions of this kind is indeed an integral part of my job, it would be incorrect to suggest that I deal with these questions daily. Instead, the day-to-day business is dedicated mainly to the law of treaties, diplomatic and consular law and Czech constitutional law, followed by occasional questions in the fields of international humanitarian law, law of international organisations, State responsibility, law of the sea and the Antarctic treaty system.

---

2 Zákon č. 234/2014 Sb., o státní službě, v platném znění.
3 Initially, the international law unit was part of the political section, however, a separate legal section was established on 1 April 1936. See the information on the website of the MFA (in Czech only): <http://www.mzv.cz>.