GUARANTEES OF PROVIDING THE INDEPENDENCE OF AN ADVOCATE

Nodira Allaberganova
Lecturer at Tashkent State University of Law
Tashkent, Uzbekistan
nadirallabergenova@gmail.com

ABSTRACT

The article will consider those aspects of advocacy, the provision of which is necessary for the protection of legal guarantees for the independent exercise of advocacy. The article analyzes the procedural guarantees of the implementation of the advocate's powers in the system of ensuring the independence of the legal profession. Independence is one of the most characteristic and basic features of the legal profession, an important condition of trust of the advocate. Examples from foreign practice are given in the context of the analysis and comparison of the national legal system in the field of advocacy. The regularities of foreign countries regarding procedural guarantees are characterized. The exceptions under which disclosure of attorney-client privilege is allowed are considered. And also, cases of involvement of the lawyer as a witness are established. The issues of the lawyer's inviolability during the search of the lawyer's premises and the seizure of the wanted items from the lawyer's office premises were studied.

Keywords: *guarantees of the advocate, procedural guarantees of the advocate, the advocate, attorney-client privilege, inviolability of the advocate.*

ГАРАНТИИ ОБЕСПЕЧЕНИЯ НЕЗАВИСИМОСТИ АДВОКАТА

Нодира Аллаберганова,
Преподаватель Ташкентского государственного юридического университета
Ташкент, Узбекистан
nadirallabergenova@gmail.com

АННОТАЦИЯ

В статье будут рассмотрены те аспекты адвокатской деятельности, обеспечение которых необходимы для охраны законных гарантий для независимого осуществления адвокатской деятельности. Анализируются процессуальные гарантии реализации полномочий адвоката в системе обеспечения независимости адвокатской деятельности. Независимость выступает как одна из наиболее характерных и основных черт адвокатской

деятельности, важное условие доверия к адвокату. Приведены примеры из зарубежной практики в контексте анализа и сравнения национальной правовой системы в области адвокатуры. Охарактеризованы закономерности зарубежных стран касательно процессуальных гарантий. Рассмотрены исключения, при которых допускается разглашение адвокатской тайны. А также, установлены случаи привлечения адвоката в качестве свидетеля. Были изучены вопросы неприкосновенности адвоката при обыске адвокатских помещений и выемке разыскиваемых предметов из служебных помещений адвоката.

Ключевые слова: *гарантии адвоката, процессуальные гарантии адвоката, адвокат, адвокатская тайна, неприкосновенность адвоката.*

АДВОКАТНИНГ МУСТАҚИЛЛИГИНИ ТАЪМИНЛАШ КАФОЛАТЛАРИ

Нодира Аллаберганова,
Тошкент Давлат юридик университети ўқитувчиси
Тошкент, Ўзбекистон
nadirallabergenova@gmail.com

АННОТАЦИЯ

Мақолада адвокатуранинг шундай жиҳатлари кўриб чиқиладики, уларнинг таъминланиши адвокатлик фаолиятини мустақил амалга оширишдаги ҳуқуқий кафолатларни ҳимоя қилиш учун зарур. Мақолада адвокатнинг юридик касб мустақиллигини таъминлаш тизимидаги ваколатларини амалга оширишнинг процессуал кафолатлари таҳлил қилинган. Мустақиллик адвокатуранинг энг характерли ва асосий хусусиятларидан бири, адвокатларга бўлган ишончнинг муҳим шартидир. Адвокатура соҳасидаги миллий ҳуқуқий тизимни таҳлил қилиш ва таққослаш бўйича хорижий амалиётдан мисоллар келтирилган. Процессуал кафолатларга доир хорижий мамлакатларнинг қонун-қоидалари тавсифланади. Адвокатлик сирини ошкор қилишга йўл қўйиладиган истиснолар кўриб чиқилади. Шунингдек, адвокатни гувоҳ сифатида жалб этиш ҳолатлари ҳам йўлга қўйилганлиги аниқланган. Адвокатнинг биноларини тинтув қилиш ва адвокатнинг идора биноларидан қидирилаётган буюмларни олиб қўйиш чоғида адвокатнинг дахлсизлиги масалалари ўрганилди.

Калит сўзлар: *адвокатнинг кафолатлари, адвокатнинг процессуал кафолатлари, адвокат, адвокатлик сири, адвокатнинг дахлсизлиги.*

INTRODUCTION

One of the main expressions of ensuring the independence of lawyers is granting them a number of privileges and necessary immunities, which are the main guarantees in their professional activities.

To begin with, it is necessary to consider the inadmissibility of interference in the professional activities of a lawyer, which implies, first of all, the storage of attorney-client privilege.

According to the norms of the law, any information obtained by a lawyer during the provision of his legal services to the principal can be considered a lawyer's secret. To assist in the full self-realization of the powers of the institute of advocacy, it is necessary to provide equal, if not greater, guarantees in the form of protection at the legislative level. At the same time, it should be emphasized that attorney-client privilege should be protected not for the benefit and in the light of private interests, limited only within the framework of the legal relationship between the lawyer and the principal, but to an even greater extent, aimed at serving justice, in other words, the public interest should always prevail private [1, p. 64]. A similar approach and perception is observed in a number of legislations of developed countries.

Thus, attorney-client privilege has an absolute character, which, by its specificity, has a wide range of coverage of objects to which the privileged relationship between a lawyer and his principal is directed, the disclosure of which entails both disciplinary and criminal liability. But, on the other hand, it is also worth mentioning that the system of legislation of developed countries clearly provides for cases when it is possible to deviate from the generally established strict rule of non-disclosure of the subject of attorney-client privilege for reasons of greater importance in the public interest than its storage as attorney-client privilege.

One of the classic examples is the disclosure of secrets as a result of the appearance of information about an impending crime that endangers public safety. For example, in Canada, the rule governing an exception to the generally accepted rules on non-disclosure reads as follows: "If a lawyer has reason to believe that there is an imminent threat of causing death or serious physical or mental harm to a person or group of persons, the lawyer is obliged to disclose confidential information to the extent necessary to prevent these consequences, but no more than the circumstances require" [2].

A similar rule is also provided for in the laws of Sweden [3] and the Netherlands [4], according to which, if any information is received about upcoming crimes that

pose a threat to public safety and that can be prevented by disclosing it and taking appropriate measures, such a deviation does not entail liability on the part of a lawyer.

DISCUSSION AND RESULTS

On the other hand, it should be mentioned that not all information and not all communication between the lawyer and the principal qualifies as information subject to non-disclosure rules. In other words, the confidentiality of information is not equivalent to the privilege of keeping it secret. Thus, all privileged information may be confidential, but the confidentiality of information does not at all mean that it is privileged [4, p. 73-74] As evidenced by modern practice, when disclosing information constituting the subject of attorney-client secrecy, it is necessary to take into account the fact that the limits of the disclosed information should not affect the interests of the principal, which are the subject of previously reported information and which do not fall under the rank of information constituting the subject of upcoming crimes. In other words, disclosure of such information must be carried out on the basis of proportionality and reasonableness, otherwise it can be qualified as a gross violation of lawyer ethics, which undermines the foundations of the institution of advocacy.

Another exception to the duty of attorney-client confidentiality can be considered the case when the lawyer himself is also involved in a criminal relationship with his principal, the ultimate goal of which is to commit illegal actions. From a legal point of view, this can be assessed as a relationship in which the information received between the lawyer and the principal cannot be considered as the subject of privileged information, which could be subject to the rules of attorney-client confidentiality [5].

A lawyer may be released from liability in case of disclosure of information constituting the subject of attorney-client privilege, when he himself needs protection. In other words, the lawyer is entitled to share the information that he received from his principal when charges of committing an illegal act are brought against the lawyer himself. As an example, we can cite the case when the subject of the dispute in the case is the amount of remuneration of a lawyer for legal services to his principal. In confirmation of the services rendered, a lawyer in such a case may submit the necessary documents [6]. In Sweden, according to the adopted Code of Professional Conduct of Lawyers, a lawyer can make public information in cases when he needs his own protection in court proceedings. However, this is allowed to be done only at the level that is sufficient and necessary for the exercise of his right to his own

protection. The passive position of a lawyer who does not intend to stand up for his own defense in case of unjustified accusation can be considered as a deliberate undermining of the authority of the institution of advocacy, which can be accompanied by the adoption of appropriate measures [7].

Another exception to a number of possible cases when a lawyer can disclose information that falls under the rules of attorney-client confidentiality is the death of the principal.

The legislation of many countries of continental Europe prescribes a rule according to which the obligation of non-disclosure of attorney's secrets does not depend on the termination of legal relations between a lawyer and his principal, including after the death of the latter, since the legislator provides for the unlimited validity of the non-disclosure rule in time [8]. In one of the cases of the Court of Appeals of the District of Columbia (USA), a decision was made according to which attorney-client confidentiality can be disclosed after the death of the principal, if there is a need to disclose a crime (if disclosure is important for the investigation) and if there are exceptions to the general rule of non-disclosure of such information [9].

Despite the above-mentioned cases of disclosure of information constituting attorney-client privilege, for the most part the current trend remains in the position that attorney-client privilege should still be ensured. This is justified by the fact that the principal, when presenting his facts to his lawyer, will do it freely and without any fear that even after his death this information may be made available to third parties, which will not push him to give false information and that will protect the interests of the principal.

Moreover, it is also worth briefly dwelling on the issues of involving a lawyer as a witness in the case and unlawful search of lawyer premises during the investigation as one of the guarantors of immunity.

The legislator does not provide for the participation of a lawyer as a witness in the case, since it is impossible to involve a lawyer as a witness in a case in which he became aware of the information in consequence of his client's request for the provision of legal services. The information received from the lawyer, which he has due to the lawyer-client relationship, cannot be considered acceptable in the case under consideration.

The American Model Code of Professional Responsibility of Lawyers, which serves as a benchmark for other legal systems of a number of countries when adopting such codes, also clearly regulates that a lawyer should not perform the functions of such representation, which may subsequently expose a lawyer to be

interrogated in court as a witness and give such testimony that may harm the interests of his principal [10].

CONCLUSION

Moreover, American law provides for the involvement of a lawyer as a witness if the following requirements are met:

• the validity of the requested information for the investigation and suppression of a crime that has been committed or in the process of being committed;

• all alternative methods of obtaining the requested information by other means have been exhausted and there is no other way out but to involve the lawyer himself to get the requested information;

• priority of obtaining the requested information over the consequences of their disclosure;

• the requested information does not fall under a number of privileged information constituting the subject of attorney-client privilege [11].

Speaking about the search of lawyers' premises, it is necessary to first distinguish which premises the rules of inviolability apply to. According to the generally established practice, such premises should mean office premises. However, court rulings include a very extensive intention to inspect and seize objects that fall under the spectrum necessary for the investigation.

When seizing wanted items, it is necessary to clarify the goals, reasons and list of objects to be seized, which avoids unreasonable research and seizures of items that may be subject to the rules of attorney-client privilege.

In the course of conducting operational investigative activities in the lawyer's premises, it is prohibited to make any fixation of materials that constitute the subject of advocacy in the part in which they constitute attorney-client privilege.

REFERENCES

1. Дабижа Т.Г. «Обеспечение гарантий независимости адвокатской деятельности и адвокатуры», диссертация на соискание ученой степени к.ю.н., Федеральное государственное научно-исследовательское учреждение «Институт законодательства и сравнительного правоведения при Правительстве Российской Федерации», стр. 64
2. Code of Professional Conduct – CBA, 1987, available at: http://www.cba.org
3. Brottsbalk (Уголовный кодекс Швеции), 2011, available at: http://www.lagen.nu

4. Wetboek van Straftecht (Уголовный кодекс Нидерландов), 2012, available at: http://wetboek-o№li№e.№1/wet/Sr.html
5. R v. Cox and Railton, Q.B.D. [1884], online available at: http://www.publications.parliament.uk
6. Кассационное определение суда Франции № 218 от 29.05.1989 г. на апелляционное решение № 87-82073, доступно на: http://www.courdecassation.fr
7. Пилипенко Ю.С. «Кто хозяин адвокатской тайны?» // Адвокатская газета, № 14 (017), 2007 Г.
8. Solicitors Regulation Authority Code of Conduct, 23.12.2011 online available at: http://www.sra.org.uk/solicitors/handbook/code/content.page
9. Swidler & Berlin v. US, Appellate Court, Case № 97-1192 [1998], online available at: http://www.caselaw.lp.findlaw.com
10. American Bar Association Model Code of Professional Responsibility, online available at: http://www.ilgr.com/codes.html
11. Grand Jury Manual, 19.02.2011, online available at: http://justice.gov
12. Tamosisus v. UK, App. № 62002/02, online available at: http://echr.coe