

**Faculty of Law**  
**OF THE NATIONAL AVIATION UNIVERSITY**

**Edited by**  
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# **JURISPRUDENCE**

## **IN THE MODERN INFORMATION SPACE**

**Collective monograph**

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The collective monograph of the author's group of the Faculty of Law of the National Aviation University is dedicated to the relevant problems of jurisprudence in the modern information space. The main globalization tendencies of the development of the law, in particular the fundamental values of the law, their interpretation and interaction of legal systems, the role of fundamental principles of law, state sovereignty and human rights, modern tendencies in ensuring legal security and economic freedoms in the light of the interaction of national legal systems are considered.

The collective monograph consists of 22 chapters, which are both the general theoretical and practical block of monographic work, and the scientists conducted a comprehensive analysis of the issues of the legal system of the social state, isolates and analyzes the essential characteristics of such a legal system and identifies the ways of developing the legal system in the context of globalization changes in the world. Also, the monograph reflects the results of scientific research of political and legal tendencies of interaction of national and international principles of statehood development, which later became the basis for considering the peculiarities of reforming state-legal institutions as a necessary condition for the development of a social and legal state in Ukraine.

Scientific publication contains articles covering issues from different branches of law.

The publication is intended for lecturers of law faculties of higher educational institutions and persons who are interested in development of legal science in Ukraine.

Contents of scientific papers do not always coincide with the views of the editorial board.

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## Chapter 19

### Some obstacles of undertaking Advocacy practices in Ukraine

The principle of competition in criminal affairs provides legal methods of securing one's juridical interests for each side of the argument. Theory of criminal process developed quite a few advantages for the defending side that should allow attorney to execute his professional commitments on a sufficient level. Advocate's practice proves that unfortunately, it is not always the case that sound theoretical concepts are finding their way into real life, and the law is executed in a foreseen manner.

For a long period of time, advocacy didn't have real power, when the competition principle existed only on paper, but with every day the institute of Advocacy becomes a powerful system, which is able to execute mutual requests, which is proved by the resistance from legal enforcement bodies, who forget that by violating attorney's rights, they violate law, which exists to protect.

To main factors that obstruct advocacy can be related those, which are tangled with series of unregulated statements on legislative level, physical obstruction of attorney's actions, commitment of crimes against attorneys, which are related with their professional actions, intimidation, psychological obstruction etc.

Despite the law-stated, science-justified guarantees of advocacy, in practice, there are systematic occurrences of violation of rights for legal support, including the one from law-enforcing bodies.

In part, this is related to obstruction of allowing attorney to defend his client's rights. For example, in case of arresting a person (when the invitation of attorney happens through the third person), some, so-called "invited lawyer" visits him and gets all the necessary information needed for investigation, while the officially invited attorney can't get access to his client due to various reasons. When facing such practices from law-enforcing bodies, attorneys advise their clients to use passcode to reveal "fake" lawyer.

Also, attorneys admit that they have to use different tools to provide security for themselves, attend self-defence lessons because of non-singular cases of threat to theirs life and health. That is why we have a case, where "the defender" has to defend oneself [18].

There is another problem of lacking sufficient investigation of physical violence towards attorneys, such cases rarely end up on the Judge's table, and

decisions of courts in similar cases quite hard to find in the register of cases, conducted by court.

For example in case #214/6983, only after intervention of the judge of Saksagansky local court of city Kryvyi Rig, this case was entered into The only state register of court decisions of violating art. 397 of Criminal Code of Ukraine. The case was related to violating the suspect's rights for legal help during the rummage by the detective and prosecutor on 17.10.2016. Similar case took place in Zaporizhya, where investigating judge of Energodar's city court approved attorney's complaint with regards to case #316/759/16-k, and required police's chief to input facts to The only state register of court decisions and commence pre-court investigation. Similar cases in attorney's favour were approved in Poltava region – case #539/743/17, Odesa region - #501/3609/15-k and 501/2382/16-k etc. [7].

There are also cases of obstructing attorney's actions directly in the courtroom. For this matter, on 7th February 2018, the investigating judge of Pechersk local court in Kyiv, adjudicated the case of not allowing attorneys to participate in the court's session, despite that they have provided all required documents which proved their stance [1].

Given facts allow for the grounds to conclude the existence of criminal violations and investigation of those, which are based on systematic obstructions of professional rights and guarantees of advocate's practice.

The delegation of the International Commission of Jurists, which carried out the observation mission in Ukraine from 20 to 22 June 2014 for assessment of the legal profession independence received consistent testimony of the attacks on lawyers that range from intimidation to the use of firearms against them.

Several lawyers were subjected to physical and verbal attacks by individuals or organized groups. Such assaults also took place in court.

These persecutions take place in the context of legislative innovations aimed at regulating the legal profession and have significant implications for freedom of association and functioning as bar associations as civil society. But legal developments were often proposed without consultation with lawyers. Such an approach complicates effective application of legislation in the professional practice of lawyers.

It is worrying that violent attacks on lawyers sometimes unreasonably attributed to extremist right-wing radical groups. The result is the impunity of criminals, despite the existence of evidence and specific criminal law provisions to protect lawyers.

Law enforcement agencies often do not investigate such cases in a quick and impartial way, even when known perpetrators of a crime.

Such attacks on lawyers often linked to the protection of clients in politically sensitive criminal cases and undermine the ability of lawyers to perform their

duties and protect the human rights of their clients free from intimidation, interference, harassment or improper interference.

Howsoever according to international human rights law the state should take measures to protect the safety of persons, of which public authorities know or should know that they are under threat, and should provide independent, prompt and thorough investigation of any attack on the life or persons physical integrity.

The main provisions of the United Nations emphasize the importance of the independence of lawyer associations in ensuring independent and equitable justice. Such associations should be institutionalized legally and practically independently from all external actors, including government, other executive bodies, parliaments, and to be outside of the private interests also [22].

Another factor that hinders lawyers' practice are internal conflicts and misconceptions of the environment, roots for which are found in deficiency of Ukraine's legal system: lacking of regulations and ambiguity of national's laws in any legal-related practices in particular.

A single, free market of juridical services that exists in EU countries is a reference point for becoming of democratic institute of advocacy in Ukraine. An impulse for this was an adoption of act "On the Bar and Legal Practice" in 2012, a predecessor for which was a soviet act of 1992 "On advocacy". However, there are a lot of uncertainty in applying something new – conflicts, misunderstanding, power games etc. are inevitable and moreover, they impede functioning of institutes in an effective, rational and in adherent manner.

Current Ukrainian legislation provisions that advocacy is an independent professional activity of an lawyer, and Ukrainian Bar – is a non-governmental, self-ruled institute, which facilitates defence, agency and other types of professional juridical assistance, as well as regulates organisation and advocacy practices in terms that are defined by law.

In accordance to the act «On the Bar and Legal Practice» issued 19 November 2012, The Ukrainian National Bar Association was found – this is the all-Ukrainian non-governmental non-commercial and non-profit professional organization that unites all of the advocates of Ukraine with the aim of ensuring the implementation of the objectives of legal profession.

According to the mentioned act, the local Qualification and Disciplinary Commissions were required to hold a lawyer's conference in all 27 regions in Ukraine. These conferences were required to form local bar self-government bodies, election of the heads, as well as elections of delegates for participation in Constituent Congress of Advocates of Ukraine and candidates' nomination to Ukrainian National Bar Association.

At this very moment, the conflict emerged. In several regions, including Kharkivska, Zakarpatska and Donetska, a few premature meetings were held as an

informal gathering of lawyers, which was not provisioned by law. During these meet-ups, certain Qualification and Disciplinary Commissions set quotas on lawyers' participation in local statutory conferences – an additional requirement, not provisioned by law. Such kind of meetings were held simultaneously in few regions.

As a result, the amount of lawyers, which could participate in local conferences or election, and for this matter, could be elected themselves to bar self-government bodies, was limited. A lot of lawyers protested against these quotas as unlawful. For instance, the head of Higher Qualification and Disciplinary Bar Commission of Ukraine, publicly condemned those and called to cancel such meetings [23].

Grounds for this were numerous facts regarding violation of disciplinary actions against Ukrainian lawyers, as a result of which, Qualification and Disciplinary Commissions made a decision to withdraw their right to conduct lawyer's practice. Among these violations, the majority of disciplinary acts were opened after adoption of 2012 Ukrainian Act "On the Bar and Legal Practice", which provisioned establishment of Ukrainian National Bar Association and conducting election to its' ruling bodies. After adoption of this act, two alternative groups of lawyers announced creation of legitimate national bar association, as provisioned by law. Both of them had name "National Bar Association". After some time, one of those was officially recognized by the government and publicly registered thereafter.

As mentioned in ICJ's report, subsequent disciplinary actions were directly or indirectly linked with lawyer's participation in "alternative and extraordinary lawyers' congresses", that were held without permission of official Ukrainian National Bar Association. Some proceedings were also linked to absence of lawyers on meetings, organised by newly-formed self-governed bodies, which are state-registered according to the new law. However, state's legal system and institutes of this profession must facilitate protection of lawyer's against intimidation, victimization or interference and inadmissibility of abuse of disciplinary actions. All sanctions against lawyers' disciplinary violations should be corresponding to committed violations[20].

What is the current state? After 5 years, according to Ukraine's mission from 4-8th March 2019, International Commission of Jurists calls Ukrainian government to apply quick actions to grant physical safety for lawyers and prosecution of the people, who are responsible for a series of attacks.

Barriers to legal defence activities, physical harassment occur when legislative innovations aimed at regulating the profession of lawyer and having significant consequences for the freedom of association and the functioning of both lawyer associations and civil society are not form finalized. The legislative novelties are under discussion and heated discussions between the National



Association of Attorneys of Ukraine, international experts, legal commissions, the Ukrainian Helsinki Human Rights Union, regional human rights groups, the advocacy community, etc.

According to the Constitution of Ukraine, the foundations of the organization and activities of the advocacy are determined exclusively by the laws of Ukraine (Article 92.14.14 of the Fundamental Law of Ukraine).

In accordance with the Constitution of Ukraine, for the provision of professional legal assistance in Ukraine there is an advocate. Independence of the Bar is guaranteed. The principles of the organization and activity of advocacy and the exercise of advocacy in Ukraine are determined by law.

Considering the adoption of the Draft Law N 9055 «On the organization and practice of the profession of advocate» of September 6, 2018, under the terms of which it is defines the legal principles of the organization and activity of the Bar in Ukraine, the procedure for acquiring the right to exercise advocacy, suspending and terminating the right to exercise advocacy, it is determine the organizational forms of advocacy, guarantees of advocacy practice, peculiarities of the status of a lawyer in labor relations, in the Public service and in the service of local authorities, principles of lawyer's self-government, etc. Currently, in the Draft law, the main unresolved issues that have become the subject of conflicts, not only in the scientific environment, but also among practicing attorneys, are follows:

- Access to advocacy as a profession (with regards to job experience, taken internships, course of passing the qualifying exam and appeal of it, the context of attorney's oath and the course of emitting the certificate of the lawyer).
- Rights and guarantees of attorney's profession (with regards to defining the workplace of the lawyer, provision of execution of the right to file the solicitor's request and receive a reply, denying to use category "power abuse", course of rummage of lawyers, notification of suspicion of criminal offense, as well as attorney's access to courtroom and law-enforcing units).
- Disciplinary charge of attorney (with regards to grounds of applied charges, types of disciplinary charges, course of charging and guarantees of possible appellation of disciplinary charges).
- Attorney's rights in the workforce relations (with regards to combining advocacy with the work at governmental bodies or any other legal body, as well as service in local self-governed bodies).
- Self-governing advocacy (with regards to granting proper functioning of the various forms of this body) [6].

In this way the serious risks of obstructing advocacy in Ukraine are tightly related with unregulated aspects in this legal branch.

Despite quite progressive legal acts in advocacy practice, the cases of unlawful actions against lawyers only became more frequent. It is obvious that executive lawyers are specialists which defend rights of others. However, as

practice shows, sometimes even highly specialized individuals are stunned by attacks of the law-enforcing bodies. Especially considering the fact that the majority of lawyers are specialized in civil and business branches, not in the criminal area. They are professionals in the legal realm, but the overwhelming part of them aren't specialized in criminal law. At the same time, no one is insured from any procedural actions targeted at themselves, and you don't have to be participant of the crime. It is enough that law-enforcers frequently mistake attorney for his client. And with the first opportunity, they practice arrests as a method of pressuring attorney for his/her active legal stance.

One important component in opposing the obstruction of advocacy is a tangible implementation of mechanisms of punishing violations of advocacy's ethics.

E.V. Vaskovsky explains specifics of attorney's profession, which is unlike any other: «Attorney has to be in the realm, which is full of unseen obstacles, that is totally unknown for any other liberal profession... any other occupation doesn't provide such moral indulgence as advocacy. Being an expert in law, attorney can legally execute any tricks, any cunning» [14, p. 464].

We agree with Vaskovsky's opinion that «judges and prosecutors are placed in the same position», that's why he believes that attorney's behaviour – is objective indicator of his moral qualities, it manifests itself through the complex of his actions, which have moral meaning, in part through the existence of ethical feelings, knowledge, tendency to give moral judgement of one's actions, acting morally – in a faithful manner. Advocacy opens a wide range of abuses of different kind. Attorney, who has a reputation of pettifogger and uses all of his arsenal for his client to win, not only won't be unlicensed, but will in turn attract bigger client base [14, p.464].

For these reasons, it is in attorney's interest to be unfair in his actions, which means that advocacy is a thin and dangerous domain, and more than any other profession requires build-up and proper execution of the job-related ethics.

As The head of the Higher Qualification and Disciplinary Bar Commission V. Zagariya points out, the most typical violation is acceptance of the case by attorney, but total abandoning after the receipt of money – switched-off phone, ignores letters and calls, misses in the courtroom (90% of complaints). There is a problem of evidence in such cases, including the record of agreement between two counterparties. In such case the Higher Qualification and Disciplinary Bar Commission investigated all related materials, recordings, interviewed witnesses and passed the decision to apply the most severe sanction – withdrawing licence for advocacy[8].

However, such materials are pre-judicial, unarguable and the fact that the attorney-violator has to pay back the deposit, according to requirement of p.2 p.1 art. 571 of Civil Code of Ukraine, is just and undoubtful. On the other hand – it is a

sanction. Later, the appeals of increased tariffs of the lawyer and demands to return the favour arise.

As a separate category of disputes, the qualification-disciplinary commission of the Bar Association is trying to remove it from the scope of disciplinary proceedings, since, as V. Zagariya considers, «... they relate to the field of civil-law relations: there is a contract, there is a list of services described, there is a demand to return the money. We are not the court, we can not interfere in the civil law relationship between a client and a lawyer. And, as a rule, we deny satisfaction of such complaints»[8].

Besides that, from the practice of the work of the qualification-disciplinary commissions of the advocates, the main complaints are those about the failure of the attorney to perform their professional duties, to receive a compensation without providing legal services or to provide them not in full or inadequate quality of the latter, admission of conflict of interest, failure to comply with professional lawyer's duties, in particular, failure to appear in court for conducting investigative actions, improper conduct in court, submission of knowingly false and fraudulent documents, delaying consideration, pressure on witnesses, advocacy incompatibility with other activities and so on.

Does the activity of a lawyer always correspond to moral attitudes? Does the lawyer ask himself the question: "Why should I try to alleviate the fate of the person who committed the most serious crime, and when there is absolute certainty that he has committed it and the mitigating circumstances are absent?" It is generally acknowledged that the lawyer has no right to lie, but in this case, he can support his client, support his false statements in the arguments, if he does not wrongly assess the actual facts proving guilty or be quite about them. [15, p. 62].

In the legal literature, there are statements that the lawyer is not entitled to help the defendant to conceal or distort the truth [2, p. 506]. Quite interesting and practical, in our opinion, is the point of view of M. Barshchevsky: «The defender must speak not the whole truth, but the truth» [2, p.283].

But when he is silent about the truth that has become known to him from the words of the defendant, isn't he helping to conceal it? Is this a way out of a situation where a lawyer uses evidence that allegedly serves the client's interest but is not credible?

The constitutional principle of the presumption of innocence refers to the interpretation of the inevitable doubts as to the guilt of a person in favor of the accused, but does this mean that questionable evidence can be used to prove innocence?

Y. Kisil strongly argues that doubting the authenticity of evidence can not and should not serve as grounds for refusing its use in protection. Otherwise, the adversarial process would get rid of its legal and moral significance [13, p. 506].

From the standpoint of A. Levy and A. Popkin, such a statement is not without contradictions, since in this situation, the internal conviction of the lawyer and the use of such dubious evidence as the matter of his conscience, his psychological state and professional beliefs are not taken into account. It turns out that the defender is compelled to sometimes conflict with his conscience and act immorally [15, p. 59].

A.A. Guseinov noted that within the framework of institutional ethics "moral requirements are ensured by a rational organization of activities within the framework of social systems, which allow with a greater predictability to guarantee a morally important social result" [10, p. 472].

Professional ethics rules for lawyers, which mainly oblige lawyers or prohibit them from certain actions, are not artificially invented obstacles that complicate the work of lawyers, but also provide the quality of work for them, making them more and more sought after and successful. Because of this, financial independence is achieved. This is also due to the high status of the appointment of a lawyer and advocacy in general.

Objective prerequisites for the implementation of this obligation are: the presence of peculiar conditions for the implementation of moral regulations. The significance of these conditions is, that the consequences of compliance or non-compliance with one or another requirement for the behavior of a lawyer, which determine the extent of his responsibility to a particular person with whom he interacts and to society in general; the presence of special, inherent in the profession of the lawyer situations regulated by specific norms of morality; features of the content of professional duties as an ethical category and the principles on which its' implementation must be based [3, p. 121].

In accordance with the Law of Ukraine "On Advocacy", one of the following disciplinary punishments can be applied for committing a disciplinary offense by a lawyer: 1) a warning; 2) suspension of the right to practice advocacy for a term from one month to one year; 3) for lawyers of Ukraine - deprivation of the right to practice advocacy with the following exclusion from the Unified Register of Advocates of Ukraine.

It should also be noted that in relation to the disciplinary liability of lawyers there is a presumption of innocence. An attorney is personally liable for violation of the Rules of Advocate's Ethics before the client [17, p. 28-32].

However, far from all of these principles are observed by lawyers while performing their professional duties, and sometimes they violate them, and that is especially unacceptable, they do not bear any responsibility for it.

Thus, it is quite common in the professional environment of the court to accept a client's order from a lawyer who is not competent in this area without warning the client about it, as well as conducting a parallel number of cases by a

single lawyer, which leads to unprofessional, ineffective and unfair treatment and settlement of these cases.

For example, in the act of 26 June 2011, the Pecherskiy District Court of Kyiv City, admitted that “lawyer, by abusing his rights, prolonged the court review, heedless of the legal order of the court, with his own replicas disrespected the judge, violated the order of the court’s listening. Also, Kiev Court of Appeal had established (act of 15 February 2013) that” ... lawyer..admits unethical, and in some cases, frankly cynical and insulting statements about the legal incompetence of the court, the prosecutor of the case, which expresses on the raised tones in the presence of the defendant, other persons, free listeners, representatives of the media, expresses threats to write complaints ..., carries out unreasonable delay of the trial through unwarranted failure to appear in the court, statement of unsubstantiated petitions, lengthy and repeated interrogations of witnesses, which testifies abusol of their rights and violation of the rules of the law of Attorney’s ethics, ignorance of the provisions of the current criminal-procedural law and gross and systematic disrespect for the court [5, p. 1].

Consequently, for violating the Rules of Advocate's Ethics, measures of disciplinary liability may be applied to a lawyer in accordance with the procedure provided by the current law on advocacy, as well as acts of the National Association of Advocates of Ukraine.

In our opinion, the guaranty for adhering to the rules of advocacy’s ethics is the provision that a lawyer may be prosecuted for violating the Rules of Advocate's Ethics by his assistant, trainee or member of technical staff and the responsibility of the head of a law office or a lawyer's association for failing to comply with the provisions of the Regulations lawyers' ethics, as well as for taking them decisions which result in violation of the Rules of Advocate's Ethics.

In connection with the important and responsible role, that is assigned to a lawyer, he must act in accordance with certain professional and ethical criteria, moreover, the requirements posed to a lawyer are much higher than those usually related to the average citizen. This is confirmed by the principles of the activity of a lawyer, which are covered in the current legislation of Ukraine. Thus, the Law of Ukraine "On Advocacy" formulates the following principles of advocacy:

- rule of law;
- legality;
- independence;
- confidentiality;
- avoiding conflicts of interest.

The same principles in the overwhelming majority form the fundamental principles of advocacy as stated in the General Code of Law for Lawyers of the EU Member States adopted by the delegation of the twelve participating countries at a plenary meeting in Strasbourg on October 28, 1988, and subsequently amended

in plenary meetings of the Council of 6 December 2002 and May 19, 2006. This document also includes the Explanatory Memorandum, which was updated on May 19, 2006, which contains comments on each article of the General Code of Conduct for lawyers in the EU countries, including to each of the proclaimed principles. In particular, this Code outlines eight general principles of the profession of lawyer:

- independence;
- trust and personal integrity;
- confidentiality;
- respect for the rules of conduct of other lawyers 'associations and lawyers' unions;
- incompatible activities;
- self-promotion;
- client's interests;
- limitation of the lawyer's liability to the client [12].

Similar provisions are also laid down in the Charter of Fundamental Principles of the Work of European Attorneys, adopted on November 24, 2006 by the Council of Bar Association and the Union of Attorneys of Europe. It contains ten principles that guide European lawyers in their work.

These principles are the basis of all national and international rules governing the conduct of European lawyers. Respect for them is the basis for the exercise of the right to protect the rights, freedoms and legitimate interests of a person and a citizen in a democratic society. These principles include the following:

- the independence of the lawyer and the freedom of the lawyer to represent the client's case;
- the right and duty of a lawyer to observe confidentiality with regard to client cases and the right to respect for professional secrecy;
- avoiding conflicts of interest between different clients or between a client and a lawyer;
- dignity and honor of the profession of the advocate, high moral qualities and good reputation of a separate lawyer;
- devotion to the client;
- fair treatment of clients in relation to the payment of fees;
- professional competence of the lawyer;
- respect for colleagues in the profession;
- respect for the rule of law and the fair administration of justice;
- self-regulation of the profession of lawyer [26].

Part of the principles proclaimed by the Charter have not yet been reflected in the national legislation of Ukraine. The Law of Ukraine "On Advocacy" establishes certain guarantees of the principle of independence in advocacy.

In particular, Art. 22 of the Law contains a prohibition to disclose information constituting a matter of lawyer's secrecy, Art. 23 - the prohibition of any interference with advocacy.

The principle of the independence of the lawyer has also been reflected in international legal acts and regulations of individual countries.

For example, the principle of independence as a basic principle of the professional activity of a lawyer is included in the General Code of Law for Lawyers of the European Communities, which is fixed as follows: the tasks performed by a lawyer in the course of professional activity require his absolute independence and the absence of any influence on him, connected first of all with his personal interest or pressure from the outside.

The principle of procedural independence of a lawyer to represent a client's case is also enshrined in the Charter of Fundamental Principles of the Activity of European Attorneys. The commentary to the Charter states that the content of this principle is that the lawyer must be free - politically, economically and intellectually - in carrying out his activities in counseling and representing the client [26].

The Basic Provisions on the Role of Lawyers adopted by the 8th United Nations Congress on the Prevention of Crime in August 1990 ensured that the proper protection of human rights and fundamental freedoms requires that everyone has the appropriate opportunity to use legal assistance provided by professional lawyers. The document also emphasizes the role of professional associations of lawyers in protecting their members from persecution, unreasonable restrictions and attacks, and the duty of the government to provide lawyers with the opportunity to carry out their professional duties without intimidation, obstacles, troubles and inappropriate interference. The principle of independence was enshrined in the International Code of Ethics of the International Bar Association (IBA), which states that attorneys must maintain their independence in the exercise of their professional duties. Lawyers with an independent practice or practicing in a partnership should, as far as possible, abstain from engaging in another profession or business if such employment compromises their independence.

The principle of procedural independence of advocacy is enshrined in the national legal acts of different countries. These include:

- Internal rules of the Paris Bar Association;
- Regulation No. 1 of the Code of Professional Conduct of Lawyers of England and Wales;
- Comprehensive rules of professional ethics and responsibility of the Spanish Bar Association in 1987;
- Typical rules of professional conduct of lawyers (USA) [24, p. 202].

The principle of moral perfection has also been reflected in international regulations and regulations of individual countries. Thus, in the General Code of

the rules for lawyers of the EU states, the trust relationship between a lawyer and a client can arise only in the absence of the latter doubts about the integrity and integrity of the lawyer specifically [4, p. 9-11.].

And in the Charter of Fundamental Principles of the Activity of European Attorneys, this principle is formulated as dignity and honor of the profession of the advocate, high moral qualities and a good reputation of a separate lawyer. The essence of this principle is that, in order to gain the trust of clients, third parties, courts and states, the lawyer must prove that he is worthy of such trust.

In our opinion, the subject of the lawyer's secret are the questions from which a citizen or legal entity require a lawyer, the essence of advice, consultation, explanations and other information that are obtained by a lawyer in the exercise of his professional duties. Non-disclosure information includes all information that has become known to a lawyer in connection with the provision of legal assistance, the implementation of protection and representation, for which there is no consent of the client to its disclosure. The recommendations of the Committee of Ministers of the Council of Europe of 25 October 2000 on the freedom to exercise professional advocacy have indicated that all necessary steps should be taken to ensure that the confidential nature of the relationship between a lawyer and his client is properly protected, lawyers must comply with professional secrecy in accordance with national legislation, internal regulations and professional standards. Any non-compliance with the principle of professional secrecy without proper consent of the client must be duly punished [11, p. 197].

According to Article 22 of the Law of Ukraine «On Advocacy», the lawyer is required to keep the lawyer's secret. It is prohibited to disclose information constituting a matter of lawyer's secrecy and to use it in their own interests or in the interests of third parties. The solicitation of the information by the lawyer and the interrogation of him as a witness on matters constituting a lawyer's secret (Article 23 of the Law) are prohibited.

The data of the pre-trial investigation that has become known to him in connection with the performance of his professional duties, the lawyer can disclose only with the permission of the investigator or prosecutor. Lawyers guilty of disclosure of information are liable under Art. 387 of the Criminal Code of Ukraine.

The client often perceives the lawyer as a judge, and from this the problems begin. Customer hides information, trying to justify in the eyes of the lawyer, openness is replaced artificially. To avoid this, the trust must become the basis of the relationship with attorney by client [25, p. 187].

One shall not go to extremes, however, how to assess a possible complete satisfaction or dissatisfaction with the complete requirements of the customer? Among the lawyers there is even a saying: the worst enemy of the lawyer is his client. According to the Law of Ukraine "On Advocacy" the client - natural or legal



person, state, public authority, local authority, in the interest of which the advocacy is performed.

The Law of Ukraine "On Advocacy" sets the grounds for denial to conclude an agreement on the provision of legal assistance: a lawyer, a lawyer's office or a lawyer association is prohibited from entering into an agreement on the provision of legal assistance in the event of a conflict of interest.

Such requirements for the activity of a lawyer as honesty and decency relate primarily to relations with the client: to resolve the case by lawful methods, not to resort to deceit, blackmail or threats, to play by their own - legitimate, honest, fair - rules, because by answering analogically to dirty and non-legal methods, the lawyer will not be different from who used such methods first [16, p. 19].

Also, the principle of confidentiality - the preservation of lawyer's secrecy - is implemented, and if the execution of an order can delay the disclosure of confidential information, the lawyer must refuse to conclude a contract for the provision of legal aid. The Law of Ukraine "On Advocacy" stipulates that the Bar Association of Ukraine carries out its activities on the principles of the rule of law, independence, democracy, humanism and confidentiality.

At the same time, the lawyer is entitled to collect information about facts, that later can be used as evidence in civil, economic, criminal cases and cases of administrative violations when carrying out their professional activities.

In exercising these rights the lawyer must strictly adhere to the requirements of the current legislation, use all the means envisaged by the law to protect the rights and legitimate interests of citizens and legal entities and has no right to use his powers to the detriment of the person in whose interests he accepted the order [21, p. 83].

Consequently, a lawyer who acts within the limits of the current legislation, adhering to the rules of lawyer's ethics, the principles of the lawyer's activity is morally and legally protected, and therefore can influence the legal means for violations of his rights due to the obstruction of his activities.

Knowledge of a lawyer is one of the most powerful means of protecting both oneself and the client. The ability to prove in court that evidence obtained illegally, including the violation of the right to legal assistance, is inadmissible as an overriding instrument for the advocacy of justice.

Among the solutions to the problems, we have outlined the strengthening of the role of advocate's self-government (since the community of lawyers is capable of solving problems that individual can not cope with the old system), the development of effective mechanisms for protecting lawyers, and the actual prosecution of guilty people for interfering with the activity of the defender to legal liability.

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