

PROCEDURAL FEATURES, PROBLEMS AND NEGATIVE TRENDS OF GROWTH VIOLATION OF PROFESSIONAL RIGHTS OF LAWYERS AND GUARANTEES OF THEIR ACTIVITIES

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DOI: 10.32342/2709-6408-2020-1-1-21

Key words: *lawyer, lawyer's secret, law, protection, law, law-making.*

Emphasizing the constitutional status of the bar, it is stated that no one can restrict the constitutional right of citizens to professional legal assistance; professional rights, honor and dignity of a lawyer are guaranteed and protected by the Constitution of Ukraine, the Law of Ukraine „On Advocacy and Advocacy“ and other laws, and life, health, honor and dignity of a lawyer are protected by the state and encroach on a liability under the law. In particular: prohibition of any interference and obstacles to the practice of advocacy; Prohibition to require lawyers and professionally related persons to provide information that is a lawyer's secret; prohibition of interrogation of lawyers on issues that contain legal secrecy; a separate procedure for conducting operative-investigative measures or investigative actions against lawyers, which may be carried out only with the permission of the court; prohibition to inspect, disclose, demand or seize documents related to the practice of advocacy; special regime of protection of life, health, honor and dignity of lawyers and members of his family (Article 397 of the Criminal Code of Ukraine - interference in the activities of a lawyer or representative of a person, Article 398 of the Criminal Code of Ukraine – threat or violence against a lawyer; Article 399 of the Criminal Code of Ukraine - destruction of the property of a defender or representative; Article 400 of the Criminal Code of Ukraine - encroachment on the life of a defender or representative); prohibition of interference in private communication of lawyers with clients; prohibition of interference in the legal position of a lawyer and many others (Article 23 of the Law of Ukraine “On Advocacy and Advocacy”). The constitutional right to professional legal assistance should be considered as one of the key elements in the mechanism of exercising a person's right to judicial protection (Article 55 of the Constitution of Ukraine) and exercising the full scope of constitutional rights and freedoms of citizens. According to Art. 64 of the Constitution of Ukraine the constitutional right of everyone to professional legal assistance cannot be limited. No one - neither citizens nor the state - has the right to obstruct legal aid. However, it should be noted that these and other guarantees of advocacy are aimed at providing clients of lawyers with effective legal (legal) assistance and are a system of state-guaranteed safeguards against any outside influence. Lack of operative judicial control over the issue of pressure on a lawyer, disregard by the pre-trial investigation authorities of the ban on identifying lawyers with clients, lack of a mechanism for quick specific legal response, lack of tendency of the state to react to each case of such violation are directly related to responsibility and indulgence in the form of punishment for committing these offenses.

References

1. The Verkhovna Rada of Ukraine (1996), Constitution of Ukraine (1996), Vidomosti Verkhovnoi Rady Ukrainy, no. 30, 141 p.
2. The Verkhovna Rada of Ukraine (2013), **The law of Ukraine „About advocacy and advocacy“** Vidomosti Verkhovnoi Rady Ukrainy, no. 27, art. 282.
3. International document (1990), „Basic principles concerning the role of lawyers. Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders“, Havana, available at: https://zakon.rada.gov.ua/laws/show/995_313#Text (Accessed 17 April 2020).
4. Dzhuzha, O.M., Savchenko, A.V., Cherniei, V.V. (2017). *Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy* [Scientific and practical commentary on the Criminal Code of Ukraine]. Kyiv, Yurinkom Inter, 1104 p.
5. Matsko, V. (2018) *Harantii advokatskoi diialnosti mif chy realnist* [Guarantees of advocacy myth or reality]. Available at: <https://unba.org.ua/publications/3464-garantii-advokats-koi-diyal-nosti-mif-chi-real-nist.html> (Accessed 17 April 2020).
6. *Praktyka ESPL. Ukrainskyi aspekt* [ECHR. Ukrainian Aspect] Available at: <https://www.echr.com.ua/yespl-nagadav-suddyam-pro-kriter%D1%97-pravomirnosti-obshukiv-v-advokativ/> (Accessed 17 April 2020).
7. The Verkhovna Rada of Ukraine (2013), **The Criminal Procedure Code of Ukraine**, Vidomosti Verkhovnoi Rady Ukrainy, no. 9-10, no. 11-12, no. 13, art. 88. Available at: <https://zakon.rada.gov.ua/laws/show/4651-17> (Accessed 17 April 2020).

Одержано 20.04.2020.