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**SOME ASPECTS OF THE DUTIES OF A LAWYER IN RUSSIA
AND EUROPE**

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Abstract

The authors analyze duties of a lawyer in the Russian Federation, France, and the Czech Republic. It is concluded that the European legislation contains a number of positive aspects that it is advisable to apply in domestic regulatory legal acts. First, it seems reasonable to regulate in detail the competitive relations between lawyers, using as an example the Czech model of relations based on the following provisions: in the Czech Republic, a lawyer does not have the right to initiate legal proceedings against another lawyer without a valid reason; in addition, if the citizen with whom the legal service is connected already has a lawyer, another lawyer may not deal with this citizen directly, without the prior consent of his lawyer, or refuse to communicate with this lawyer. Secondly, the authors believe that it is necessary to modify the legislation on attorney-client privilege. It is expedient to adopt some provisions of the Czech legislation, according to which in case of the client's death or termination of existence the right to release the lawyer from the obligation to confidentiality belongs to his heir or successor, and an oral application for exemption from attorney-client confidentiality is also allowed if it is made at the hearing by making the appropriate information in the protocol. Besides, we consider it necessary to regulate the issue of confidentiality of communication with foreign lawyers in the domestic legislation, based on the French model.

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1. Introduction

The bar, which has deep historical roots, is one of the most important legal institutions of every state (Rostow, 1962). Standing for the protection of the fundamental rights and freedoms of both citizens and their associations, the institute of advocacy is an integral part of modern civil society and at the same time ensures the optimal functioning of the judicial system. Moreover, building a truly independent judicial system that corresponds to the basic principles of the rule of law is possible only if there is an independent bar. The protection degree of citizens of a particular state directly depends on the circumstances, how much the legal activity is regulated and organized in practice.

2. Problem Statement

In modern conditions, the legal status of a lawyer is of particular importance, the analysis of his rights, duties and responsibilities allows not only to identify possible problems of their implementation, but also to determine the optimal model for functioning of the institute of advocacy as a whole. It should be noted that the lawyer can be called a "servant of justice", which mediates the establishment of certain requirements by the state for the implementation of legal activities (Woolley, 2015).

Of particular interest, in our opinion, is the measure of proper behavior of the lawyer, which determines his duties. This is mediated by the fact that the legislation of different countries contains various requirements for lawyers to carry out their professional activity. We believe that a comparative analysis of the lawyer's duties established by legislators in different countries will contribute to the symbiosis of positive practices and their projection into national legislation, as well as to the identification of key problems in the performance of legal duties and their solution.

3. Research Questions

In the framework of this research, we have solved a number of tasks. First, we analyzed the legislation of Russia, France, and the Czech Republic that regulates advocacy. Secondly, according to the legislation of these countries, a number of lawyers' duties were considered in detail, their main similarities and differences were found out, and a conclusion was made about the identified positive and negative aspects of these duties.

4. Purpose of the Study

The purpose of the study is to establish the most optimal content of fundamental legal duties. In particular, special attention is paid to issues of attorney-client confidentiality and attorney-client ethics. In addition, it is important to analyze the obligation to allocate funds for the general needs of the lawyer association.

5. Research Methods

The methodological basis of the study is the dialectical method. The authors use general scientific and private scientific cognitive methods for conducting an objective and comprehensive research. These

include: system and logical methods, the method of system-structural analysis, as well as a comparative legal method that allowed us to correlate norms of the current legislation of European countries on advocacy and identify common, similar features and differences in them.

6. Findings

The basic normative legal act regulating the legal status of a lawyer in the Russian Federation is Federal law No. 63-FZ of May 31, 2002 "On advocacy and bar in the Russian Federation". Article 6 of this Federal law establishes the main duties of a lawyer in our country. One of them is the obligation to observe the code of professional ethics of a lawyer, as well as to execute decisions of the advocates chamber of a subject of the Russian Federation and the Federal chamber of lawyers of the Russian Federation adopted within their competence (Federal law No. 63-FZ of May 31, 2002 "On advocacy and bar in the Russian Federation").

Article 17 of the Act No. 85/1996 of the Czech Republic contains a similar obligation, according to which a lawyer should act in a way that does not damage the dignity of the legal profession (Act No. 85/1996 Coll. of 13th March 1996 on the Legal Profession; Timofeeva, 2013). For this purpose, the lawyer must observe not only the rules of the professional ethics, but also the competition rules.

In turn in the Russian Federation, the Code of ethics for lawyers dated 31.01.2003 also provides representatives of the legal profession with obligations towards colleagues – other members of the legal community. However, they mostly relate to respectful dealing with each other, with little or no regulation of competitive relations (Code of ethics for lawyers dated 31.01.2003).

The Code contains only some clauses according to which the lawyer has no right to persuade a person who came to the legal body to another lawyer to enter into an agreement on providing legal assistance between himself and this person. The lawyer is also obliged to notify the acceptance of an order to conduct a case against another lawyer (Code of ethics for lawyers dated 31.01.2003). Thus, the Russian legislation implies less stringent rules regulating the competition between lawyers.

In our opinion, in this regard, the Czech legislation is on a more promising path. We believe that the introduction of a similar model for regulating competitive relations between lawyers by the domestic legislator will allow us to bring their relationships to a new higher level.

Special attention in the legislation of all countries is paid to the attorney-client privilege. Moreover, in Russia, professional secrecy is an absolute priority of the lawyer's work. The main content of the rules on attorney-client privilege is those circumstances that the lawyer is obliged to remain silent about all the facts that became known to him in connection with the provision of legal assistance, and only the principal has the right to release the lawyer from the obligation to keep professional secrets. In the Russian Federation, such releasing must be expressed in writing in conditions that exclude the influence of a lawyer and third parties on the principal (Code of ethics for lawyers dated 31.01.2003).

The regulations of European countries such as France and the Czech Republic contain similar provisions on attorney-client privilege with minor exceptions. In our opinion, it seems reasonable to consider the idea of applying some European rules into domestic legislation both in order to optimize the activities of lawyers, and for the convenience of the principal and his successors.

In turn, French law pays special attention to regulating the issue of confidentiality of communication with foreign lawyers. For example, in professional contacts with lawyers who practice in non-European Union countries, a French lawyer must be sure that there are rules in this country to ensure the confidentiality of their correspondence before beginning the information exchange. If there are not such rules, the lawyer should enter into a confidentiality agreement with a foreign colleague or make a request to his client about whether he accepts the risk associated with the exchange of confidential information (Solovieva, 2015).

Taking into account the high degree of globalization of modern society, we believe that the requirements to the professional secrecy should also cover the relationship of a lawyer with foreign colleagues, and the exchange of information with foreign lawyers should include appropriate guarantees of confidentiality. In our opinion, the absence of norms in the legislation of the Russian Federation regulating relations with colleagues from foreign countries regarding information constituting a professional secret is a significant omission.

7. Conclusion

Summing up, we note that the main task of a lawyer in any state is to provide qualified legal assistance. At the same time, when carrying out his/her professional activities, a lawyer faces a number of prohibitions established by law. Nowadays, the legal status of a lawyer has its own specifics in any society, in absolutely every state.

Analysis of the bar system functioning in foreign countries helps to predict the development of the bar institute in our country, allows us to better understand goals and objectives of the existence of this institution, as well as creates conditions for the modernization of domestic legislation.

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