

RUSSIA

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I- DEFINITION - PRESENTATION

Presentation

Russian legislation does not define the term "legal privilege". However, the meaning of this term can be defined by analysing several statutes which stipulate different kinds of immunities and privileges provided to lawyers in connection with their professional activity, and to their clients in connection with their status in proceedings.

In general, legal privilege for attorneys at law can be defined as the obligation of the attorney at law to maintain "advocate secrets", in particular to keep secret all information received from clients in connection with legal consulting, and the corresponding obligation of state bodies and third parties not to commit actions the aim of which is the disclosure of "advocate secrets".

In general, client privilege can be defined as the right of the client not to witness against himself/herself or against his/her close relatives.

1.1 Attorney privilege (legal professional privilege)

Attorney privilege is only granted to attorneys at law. An individual is considered to be an attorney at law if he/she:

- obtained the status of attorney at law through a legally specified procedure;
- is registered in the register of attorneys at law held by the Ministry of Justice of Russian Federation; and
- has the right to provide advocacy.

All other legal advisors who provide legal consulting services in the territory of the Russian Federation (including those representing clients in civil litigation or at criminal trials without being licensed as attorneys at law) are not subject to attorney privilege, and may not benefit from it.

Information received by such a legal advisor from a client can be protected by a confidentiality agreement entered into between the legal advisor and the client. The confidentiality agreement will only guarantee non disclosure of the information by the legal advisor; it will not affect the rights and obligations of state bodies, nor will it preserve confidentiality in the case of an investigation by state authorities.

In other words, state bodies (including law-enforcement bodies) are not limited in their right to demand this information from the legal advisor as well as to seize documents received by the legal advisor from the client (in the case of a state inspection, or a suspicion that a crime was committed, etc).

1.2. Client Privilege

Client privilege is closely connected with criminal proceedings and is granted only to individuals under suspicion and certain types of witnesses.

2. Sources

The main scope of legal privilege granted to attorneys at law and clients is specified in the following statutes:

- The Constitution of the Russian Federation, specifying the general human rights, including the right to privacy and the right to refuse self-incrimination. These declarations of the Constitution are considered to be the basic provisions on which legal privilege is based.
- Federal law "On advocacy and advocateship in the Russian Federation", specifying the definition of "advocate secrets" and the scope of attorney privilege;
- The Code of Criminal Procedure of the Russian Federation, specifying provisions against self-incrimination and incrimination of the close relatives;
- Federal law "On investigative work", specifying few limitations of performing investigative work against attorneys at law;
- Federal law "On Counter-acting legalization (money laundering) of proceeds from crime, and terrorist financing" obliging all legal advisers (including attorneys at law) to provide state bodies with information on suspected cases of money laundering;
- Federal law "On commercial secrecy", providing for the protection of information classified as commercial secret.

In addition to the above mentioned statutes, there are several Regulations of the Constitutional Court of the Russian Federation which specify the scope of attorney privilege, in particular clarifying the provisions of the legislation, which stipulate that the scope of attorney privilege cannot be voluntarily construed by law-enforcement bodies in order to limit the privilege.

3. SCOPE/LIMITS

3.1. Scope of attorney privilege

The scope of attorney privilege specified in the legislation includes:

- any information or data connected with an attorney at law's legal consulting with a client is considered "advocate secrets";
- an attorney at law is prohibited from disclosing information or data received from a client in connection with his legal consulting (i.e. prohibited from disclosing "advocate secrets");
- an attorney at law cannot be examined as a witness in relation to circumstances which came to his/her knowledge in connection with legal consulting or was received by him/her in connection with a request for legal consulting;
- investigative work at the attorney at law's private / office premises, as well as investigative work against an attorney at law, are forbidden unless otherwise permitted by court ruling;

- documents, information, data, or objects received during investigative work at an attorney's private / office premises may be used as adequate court evidence only if they are not connected with the consulting provided by the attorney at law to his/her client;

- law enforcement bodies cannot request information connected to an attorney at law's legal consulting from employees of the attorney at law.

3.2. Limits of attorney privilege

As a general rule, attorney privilege can be waived only by the client.

However, legislation stipulates several grounds for limiting this principle. These grounds, which are specified in statutes, are construed narrowly:

- if any criminal instrument, or goods whose circulation is prohibited in the territory of the Russian Federation, is found in the possession of an attorney at law during an investigation, it is considered adequate court evidence even if it is connected with legal consulting provided by an attorney at law;

- an attorney at law is obliged to inform state bodies if he has information on any signs of money laundering, if it is not considered "advocate secrets".

3.3. Scope of client privilege

The scope of client privilege specified in the legislation includes:

- the right of an individual to refuse to answer questions which might expose him/her to criminal proceedings;

- the right of an individual to refuse to answer questions which might expose his/her close relatives to criminal proceedings.

Therefore, client privilege is fully connected with criminal proceedings only and is not applied to civil disputes. Furthermore, it does not affect any documents, data, or objects which may be found and seized during investigations against the client or at his/her premises.

3.4. Limits of client privilege

The above-described client privilege cannot be limited; however, a client may refuse to use or exercise the privilege.

3.5. Between lawyers

Correspondence between lawyers, and information regarding professional negotiations between lawyers, does not gain any special legal protection in the Russian Federation, with the exception of correspondence prepared or sent by attorneys at law in connection with legal consulting of their clients, which can easily be recognised as "advocate secrets".

The use of the commercial secrecy regime shall be recommended, which creates at least some protection against the third parties access to information. The holder on information constituting a commercial secret shall, upon a motivated request of a state power body, other state authority, or body of local self-government, furnish them on an uncompensated basis with information

constituting a commercial secret. It is worth noting that the request shall be motivated and signed by a duly authorised official. It should also contain a statement of purpose and legal grounds for requested information constituting a commercial secret and also time limits for supply of such information, unless otherwise provided under federal laws. In case of refusal of the holder of information constituting a commercial secret to furnish it to a state power body, other state authority or body of local self-government, the agencies shall have the right to ask for that information via a court. The documents to be supplied to the state bodies specified and containing information constituting a commercial secret shall bear a "Commercial secret" stamp, indicating its holder (in case of legal entities - full denomination and location, in case of individual entrepreneurs - surname, first name, patronymic of the citizen being an individual entrepreneur, and place of residence). State bodies are not entitled to further disclose information received from third parties.

4. IN-HOUSE LAWYERS

As mentioned above, only attorneys at law are entitled to attorney privilege. In-house lawyers cannot be registered as attorneys at law and therefore they do not have any legal privileges. Consequently, state bodies (including law-enforcement bodies) have a right to seize documents with which an in-house lawyer works, as well as to examine and interrogate an in-house lawyer in connection with his/her professional duties within the company, if it is necessary as part of a case involving the inspection of the company or criminal prosecution of the head of the company or other employees.

5. PROSPECTIVE

Current Russian legislation only directly protects the professional secrecy of attorneys at law. This protection allows for non-disclosure of professional information by attorneys at law, and makes it impossible for state law enforcement bodies to receive this information through official requests.

The professional secrecy of other legal advisors is not protected from official state requests. However, it can be protected from third parties under a confidentiality agreement which prohibits the legal advisor from disclosing it.