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## **IDENTIFICATION OF A LAWYER WITH A CLIENT AS A VIOLATION OF THE RIGHTS AND GUARANTEES OF LAWYER ACTIVITY**

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The article is devoted to highlighting one of the actual problems of identifying a lawyer with a client. The European direction of the development of Ukraine as a legal state actualizes the problems of guaranteeing the rights and freedoms of the participants in the judicial process, as well as their effective protection against socially dangerous encroachments. A bar exists to provide professional legal assistance in Ukraine. The principles of the organization of advocacy activities and the implementation of advocacy activities in Ukraine are determined by the Law “On Advocacy and Advocacy Activities”, decisions of the National Association of Advocates of Ukraine, the rules of advocacy ethics, etc. At the same time, the organization of the high-quality work of the bar and the implementation of the principle of competitive justice requires the mandatory provision of real security guarantees for defenders or representatives of persons. The state has a duty to ensure that lawyers are not identified with their clients or with the motives of their clients’ actions as a result of their professional duties. Lawyers can be identified with clients because they are accused of serious crimes, because they receive confidential information, or because they defend their clients. This often happens in high-profile or politically motivated cases, including those involving accusations of treason or terrorism in connection with the armed conflict in eastern Ukraine. Lawyers continue to be identified with their clients and face negative consequences not only at the hands of violent, extremist and radical groups, but also as a result of the abuse of legal procedures against them. Under no circumstances should attorneys identify with their clients or their clients’ motives for acting as a result of representing clients, including those whose political beliefs are contrary to the official position of the government.

**Key words:** lawyer; guarantees; protection; prohibition of identification; independence of the legal profession; rights and guarantees of legal practice; offenses against lawyers.

**Formulation of the problem.** The profession of a lawyer is a profession of providing qualified legal assistance to legal entities or individuals for the protection of rights and subjects and representation of interests in court and has the appropriate legal status.

In his professional activity, a lawyer often has to take on high-profile cases during participation in which he may be subject to condemnation or even persecution. Taking into account the political situation

in the country, lawyers have to defend persons who are recognized by the representatives of the previous government as involved in corruption, indicted persons, deputies and persons who are subject to public condemnation. The question of identification of the lawyer with the client became especially acute in connection with the introduction of martial law, which led to a number of high-profile cases and processes regarding the commission of war crimes. However, it is impossible to solve the existing problem of public condemnation except by raising the level of consciousness and highlighting the negative consequences of such actions.

**Analysis of research and publications.** The problem of determining the essence of identifying a lawyer with a client has been the subject of research by a number of scientists. Among the scientists who studied certain aspects of this problem, it is appropriate to single out T. V. Varfolomeev, T. B. Vilchik, T. G. Dabizhi, S. I. Dobrovolska, T. S. Kovalenko, O. V. Krasilnikovu, R. G. Melnychenko, A. V. Ragulina, Yu. I. Stetsovsky, S. Yu. Sumenkova, A. M. Titova, D. P. Fiolevsky, O. N. Yarmysh and others. At the same time, there remains a sufficient number of debatable issues in this area.

**The purpose of the article** there is a study of the professional activity of lawyers, namely the identification of the lawyer with the client, as a guarantee of the lawyer's activity.

**Main material presentation.** Society consciously or unconsciously equates the lawyer with the client, while forgetting the main purpose of the legal profession, namely the protection of the rights and legitimate interests of citizens. Regarding the identification of the lawyer with the client, it is worth noting that this problem is getting worse, especially considering the processes of informatization. The community receives an excessive amount of information, which is usually presented in a way that is beneficial for certain circles of society and media representatives, who get their ratings by distorting information, and not in an objective format, reducing the ability of society to think critically, that is, the existence of group thinking, which affects not realizing that, what role in social life is played by the identification of lawyers with their clients. An example is that lawyers who provide legal aid quite often find themselves in a situation in which their lives are threatened, or there are threats of physical violence against them or their relatives, because people compare the lawyer with the client's case under the influence of the mass media, the public or by opponents of the lawyer sometimes unreliable information.

That is why, if the social majority has a negative attitude towards the protected person, the same will be the attitude on the psychological level towards his defender. This can be countered only by clarifying that a lawyer is, first of all, a professional who must provide legal assistance to a person, even if he or she disagrees with the majority or the state. However, even this does not guarantee success – a lawyer will always be associated with his clients, and he must be ready for this. This reason is usually related to the negative attitude of the community, which in the whirlwind of new events and news forgets about it, and has nothing to do with the identification of the lawyer with the client as a means of putting pressure on the lawyer in corruption cases. This is already a prerequisite for further violation of the rights of lawyers.

It is obvious that lawyers should be protected from identification with the client or the case, because the task of lawyers is not to exonerate the client, but to protect him.

The identification of lawyers with their clients quite often entails offenses against the lawyers themselves. This issue is quite relevant, since the solution to this problem cannot be only increased liability for offenses against lawyers, and this is a matter of a national scale.

One of the main guarantees of practicing as a lawyer is the ban on identification of a lawyer with his client. This provision is noted both in Ukrainian legislation (Article 23 of the Law of Ukraine “On Advocacy and Advocacy”) [1] and in international law (Basic provisions on the role of lawyers, adopted by the 8th UN Congress on Crime Prevention in August 1990) [2].

According to the content of 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 prevent the receipt of legal aid.

Lawyers should not identify themselves with clients and their cases in connection with the performance of professional duties; at the same time, the lawyer must have criminal and civil immunity from prosecution for statements related to the case, made in writing or orally in the conscientious performance of his duty and professional duties in court.

Guided by the norms of the Constitution of Ukraine [3] and current legislation, the RAU emphasizes that the rights of lawyers are protected by a system of state guarantees, including the prohibition of identification of a lawyer with a client (Article 23 of the Law of Ukraine “On Advocacy and Advocacy Activities”) [4]. It is worth reminding that the Bar Council of Ukraine adopted decision No. 47 dated 5.08.2020 “On appeals to Ukrainian and international institutions on issues of violation of the rights of lawyers in connection with non-execution of court decisions by law enforcement agencies” due to the fact that rights are systematically violated lawyers, that is, they are not recognized as a party in court proceedings and are not admitted to the proceedings materials, court decisions are ignored [4].

Today in Ukraine, despite the rather comprehensive legislative regulation of the guarantees of the professional activity of lawyers, the problem of the identification of a lawyer with a client still remains relevant. Thus, on August 5, 2020, the Bar Council of Ukraine approved the decision “On preventing the identification of lawyers with clients and interference with the professional rights of lawyers”. The reason for this was mass complaints by lawyers about pressure from judges of the High Anti-Corruption Court in high-profile cases [5].

The UN Guiding Principles on the Role of Lawyers (§18) state that lawyers should not identify themselves with their clients or their clients' cases as a result of performing the functions of a lawyer. However, these principles are increasingly being defeated in the new conditions of social justice, accountability, publications and comments in social networks [6].

The same rule is contained in the standards of the International Bar Association regarding the independence of the legal profession (clause 7): “A lawyer should not be identified by the authorities or the public with the client or the client's case, no matter how popular or unpopular it may be”. The provisions of this clause are quite often quoted in conjunction with the rule that everyone has the right to legal representation in court, so lawyers should participate in rather unpopular cases as well [7].

However, the Bar Council constantly records facts of violations of the guarantees provided by law to lawyers regarding the prohibition of identification. Moreover, identification of a lawyer with his client is carried out both by the public and by representatives of the state authorities, namely law enforcement agencies. Unfortunately, today the state does not adequately solve this issue. Identification of the lawyer with the client makes the legal position of the lawyer as a defender vulnerable, and its practical implementation becomes dependent directly on the law enforcement system. This identification is absurd and inadmissible, because it hinders the lawyer's proper human rights work, puts him in a rather uncomfortable position, and makes it impossible for him to perform tasks and functions related to the protection of the client. It should be noted that when a lawyer, performing his professional duties, is engaged in the protection of a person who committed illegal actions and as a result of these actions received a negative assessment from the public, then such a lawyer begins to be equated with his client, which ultimately leads to the initiation of an investigation into him and conducting searches.

Despite the establishment of this guarantee of non-identification at the national and international levels, cases concerning lawyers are still observed in Ukraine, such as:

- 1) criminal prosecution;
- 2) conducting investigative and other procedural actions;
- 3) attacks on lawyers due to their identification with clients [8].

There are known cases when criminal proceedings were instituted against a lawyer and a notice of suspicion was made known in the case of his client, despite the fact that within the scope of this case the lawyer acted exclusively in the role of a defense attorney. In addition, in order to obtain evidence, investigative bodies searched premises belonging to lawyers and their relatives. These facts are

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inadmissible, because they not only create pressure on the lawyer, but also violate his rights and prevent the implementation of the right to defense of the client.

As for attacks on lawyers that occur due to their identification with clients, this issue became the subject of discussion within the 23rd report of the UN High Commissioner for Human Rights from May 16 to August 15, 2018. Accordingly, the Office of the United Nations High Commissioner for Human Rights. During the reporting period, 3 cases of attacks on lawyers or attempts to intimidate them were recorded. It should be noted that 2 of these cases took place in the court premises in the presence of police officers who did not react to the physical violence against the lawyer. The reason for such actions was the identification of the lawyer with the clients whose rights he defended in court [9].

Why should lawyers not be identified with clients and their cases in connection with the performance of professional duties? First of all, because it can harm the client, lawyer or members of his family, make it impossible to provide legal aid to the person who applied for it. Only a high-class professional, a morally strong person will be able to provide legal assistance in conditions where public accusations and insults appear in the media, criminal prosecution, searches are conducted, and as a result, the lawyer's reputation suffers, which can demoralize the lawyer to a great extent.

In addition, there is an increasing amount of illegal interference and pressure on lawyers by law enforcement agencies and the court, ranging from obstructing a lawyer's legal activities to physical violence and even murder. Thus, during NAAU research, it was recorded that approximately 2,500 crimes were committed against lawyers in the period from 2015 to 2020: 9 murders, 6 attempted murders, 41 cases of physical violence, 114 criminal prosecutions, 983 searches, 350 secret investigative search actions, 16 cases, interference and obstruction of the legal activities of lawyers – 1378 cases. [10]

Taking into account the numerous violations of the rights and guarantees of advocacy by law enforcement agencies, the "Association of Lawyers of Ukraine" repeatedly addressed open letters to the President of Ukraine, the Prosecutor General of Ukraine, other state authorities regarding the prevention of violations of the professional rights of lawyers and the identification of a lawyer with a client [11].

Therefore, it can be concluded that attention should be spread among representatives of the prosecutor's office and other law enforcement agencies regarding the prohibition of identification of a lawyer with a client. However, this is possible only after the creation of a legally established effective mechanism for the implementation of responsibility for the violation of this prohibition, a mechanism for stopping and blocking such illegal actions. Such legislative changes are urgently needed now, as the violation of the rights of lawyers also violates the human rights of persons who, due to political and corrupt interests, may remain unprotected from the state.

Ignoring the ban on identifying lawyers with clients discredits Ukraine as a democratic legal state where everyone has the right to protection. The identification of lawyers with clients is also discrimination against the principles of equality of all before the law and a violation of people's constitutional rights.

The military conflict significantly affected the justice system, and individual lawyers found themselves on the front lines of the conflict or ideological consequences in one form or another. Although almost every lawyer has been affected in their work, those who work on political cases have been attacked and harassed, and in some cases murdered. This is a signal to all lawyers about the consequences they may face when defending their clients and has the effect of constraining the legal profession.

Political approval of violent, extremist, radical groups operating in the name of patriotism has led to a weakening of the rule of law and a high level of impunity for attacks on lawyers. Not only the legal profession, but also judges and the justice system as a whole, is undermined by systematic and regular attacks and impunity for them [11].

Lawyers are usually left alone with the problem without effective legal protection from groups or individuals who intimidate, threaten, assault and otherwise oppress them and interfere with their professional activities. The most serious consequences of such attacks are the murders of lawyers, for which the perpetrators were not brought to justice. It is commendable that NAAU takes an active role in monitoring such cases, despite the fact that there is little progress in prompt and full investigation [12].

Another problem is that lawyers continue to be targeted by the justice system for unacceptable reasons, despite various judicial and law enforcement reforms. Lawyers continue to be identified with their clients, and they face negative consequences not only at the hands of violent groups, but also the abuse of legal procedures against them. High-profile cases represent a risk for those independent lawyers who choose to conscientiously defend their clients [13].

**Conclusions.** The independence and role of lawyers must be recognized by all state institutions: executive, legislative and judicial, all other public authorities, including law enforcement agencies, as well as all participants in court proceedings. No. executive or judicial body shall initiate or threaten to initiate criminal, administrative, economic or other sanctions for any actions related to client protection, professional duties, standards and ethical norms of lawyers. Under no circumstances should attorneys identify with their clients or their clients' motives for acting as a result of representing clients, including those whose political beliefs are contrary to the official position of the government.

So, summing up the above-mentioned, we can come to the conclusion that in order to properly perform professional duties, a lawyer must be protected from hindering his professional activity as a result of his identification with the client. Unfounded suspicions of complicity in the commission of a crime by a client, intimidation, assault on life, public condemnation are what lawyers have to face in their professional activities. And only a balanced approach of the legislator to the settlement of this problem, simultaneously with public coverage of the risks of the activity and life of lawyers, to which the identification leads, will make it possible to stop the negative trend of identifying the lawyer with the person who applied for legal assistance.

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## **ОТТОЖНЕННЯ АДВОКАТА З КЛІЄНТОМ ЯК ПОРУШЕННЯ ПРАВ ТА ГАРАНТІЙ АДВОКАТСЬКОЇ ДІЯЛЬНОСТІ**

У статті висвітлено одну із актуальних проблем – ототожнення адвоката з клієнтом. Європейський напрям розвитку України як правової держави актуалізує проблеми гарантування прав та свобод учасникам судового процесу, а також їх ефективну охорону від суспільно небезпечних посягань. Для надання професійної правничої допомоги в Україні діє адвокатура. Засади організації діяльності адвокатури та здійснення адвокатської діяльності в Україні визначаються Законом “Про адвокатуру та адвокатську діяльність”, рішеннями Національної асоціації адвокатів України, правилами адвокатської етики тощо. Організація якісної роботи адвокатури та реалізація принципу змагальності судочинства потребує обов’язкового забезпечення реальних гарантій безпеки для захисників чи представників осіб. Держава має обов’язок забезпечити, щоб адвокатів не ототожнювали з клієнтами або з мотивами дій їхніх клієнтів у результаті виконання ними професійних обов’язків. Адвокатів можуть ототожнювати з клієнтами, оскільки їх звинувачують у тяжких злочинах, тому що вони отримують конфіденційні відомості або тому, що захищають своїх клієнтів. Це відбувається часто у резонансних чи політично вмотивованих справах, зокрема таких, що містять звинувачення у державній зраді або тероризмі у зв’язку зі збройним конфліктом на Сході України. Адвокатів продовжують ототожнювати з їхніми клієнтами, вони стикаються з негативними наслідками не лише від рук насильницьких, екстремістських та радикальних груп, але також як наслідок зловживання стосовно них юридичними процедурами. Адвокатів за жодних умов не повинні ототожнювати із їхніми клієнтами або мотивами дій їхніх клієнтів у результаті представництва клієнтів, зокрема тих, чий політичний переконання є протилежними до офіційної позиції уряду.

**Ключові слова:** адвокат; гарантії; захист; заборона ототожнення; незалежність адвокатської професії; права та гарантії адвокатської діяльності; правопорушення щодо адвокатів.