

International legal standards of the bar activity and its domestic security (using the example of the Russian Federation and France)

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Abstract. Until very recently legal development of the action mechanisms of such universally recognized principles and norms has been implemented at the level of international legal instruments, including within the United Nations, the Council of Europe and the Commonwealth of Independent States (relevant declarations, covenants, conventions, resolutions on human rights and criminal defense, etc.) In recent years the interest of domestic lawmakers to international non-governmental acts in the field of the Bar activity has also greatly increased.

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Introduction

Modern trends in reforming of relationships between the state and the individual put domestic juridical sciences before the need to revise the previous approaches to the theory of the Russian criminal defense proceedings.

The basis of the current concept of adversary in criminal proceedings should be provisions of the Constitution of the Russian Federation concerning the recognition of the supreme value of a man, his rights and freedoms (Article 2), and the warranty of these rights and freedoms in accordance with the generally recognized principles and norms of the international law (Article 17).

Theory

Norms, rules of professional criminal defense are common and universal, they represent a certain civilization measure of the vulnerability of the person to institute criminal proceedings as well as the level of development of the institution of criminal Bar.

Due to the prevalence and universality of the phenomenon of these rules and regulations it is permissible to call them other than criminal defense standards.

The term "standards" in the field of criminal defense is mentioned for the first time in the "Basic Principles on the Role of Lawyer", adopted by the Eighth United Nations Congress in August 1990 in New York: "Lawyers, assisting their clients with the administration of justice, should ensure respect for human rights and fundamental freedoms recognized by the national and international law, and should always act freely and persistently, in accordance with the law and recognized professional standards and ethics" [1].

Code of Professional Ethics of the Russian Lawyer (Article 1) also establishes mandatory for each barrister "rules of conduct for the Bar based on moral criteria and traditions of the legal profession, as well as international standards and regulations of the legal profession".

Result

Standards in criminal protection, for example, can be of methodological and international legal character.

1) From the standpoint of criminal defense, standard - an element of techniques and methodology of professional criminal defense⁴.

Methodology of criminal defense is filled with elements and gets forms which are called the means and methods of defense (the Article 53 of the Criminal Procedure Code of the Russian Federation) [2].

Means and methods of criminal defense forming any technique protection ("crystal structure" of protection) can be classified, for example, in the following order:

Means are the simplest elements of protection techniques, which include - methods, acts, actions, etc. (For example, drafting the text of witness examination by a defender as well as making written comments in the record of the investigative action, attorney's consultation with the defendant at the place of detention of the latter, the use of the right to reply in the pleadings, etc.).

Methods is a combination of the simplest elements of protection techniques, among them - the forms, methods, phases, acts, etc. (E.g. preparation and presentation in court the defense complaints about the actions of the investigator; familiarization with materials of the criminal case together or

separately with the defendant, with or without the use of technical equipment, etc.)

In criminal defense methodology we can distinguish:

Table 1. Criminal defense methodology

Means and methods of criminal defense	Contents
"Standards"	conditionally required means for each defender and methods of protection, criminal defense «truisms»
"Standard procedures"	ordinary, not the original means and methods of protection appropriate in relation to the stage of criminal proceedings, categories or types of crimes alleged against the defendant, etc
"Casual technique"	in a particular case, original individual techniques, tools and methods of defense, attorney's "know-how"

Standards is conditionally mandatory combination of means and methods of protection are usually established, foreseen or declared by the international or national legislation in the field of criminal defense.

In addition, some selected Bar rules of the legal profession (corporate canons) adopted by the federal, regional or international bodies; and governing in particular means and methods of professional protection, should be classified to the methodological standards.

In our understanding methodological standards are sustained (template, becoming formulary) lawyer types of verbal (oral and written) acts such as, for example, an application for membership in a criminal case as a defender, a petition to call witnesses at the hearing in order, etc [3].

2) Standards of the international character in the field of criminal defense.

It should be taken into account that the right to legal assistance is an integral part of the legal status of the individuals and legal entities that characterizes national proceedings in regard to international legal relations [4].

The right to defense in criminal cases is the "hallmark" of the legal system of any state, but there is some international format of the necessary rules and regulations in the area of the Bar concerning it.

These include such rules, measures and criteria of the Bar, which are supranational, a historic, cross-jurisdictional nature, exist and appear in the legal systems of most countries.

Without claiming to be the exhaustive analysis of the issue, we believe that a number of international standards of the advocacy in criminal protection should include:

- occupational standard of the lawyer - defender's independence relevant to his status;
- occupational standard of confidentiality in the lawyer - defender's activity;

- the standard of lawyer's privilege supported by the legislature and the Bar community;
- the standard of inadmissibility of conflict of interest in criminal defense;
- the standard of interrelation between a lawyer - defender and the judiciary;
- the standard of occupational census in admission to criminal defense.

It is widely known that the Russian Bar has professional roots of French origin. Even random article analysis of "The Rules of Legal Profession" by M. Molloy (France, XIX century) and "The Procedure of Advocacy" in modern France on the one hand, and Code of Professional Ethics of the Russian Lawyer, in the system of different corresponding norms of the Russian legislation related to the attorney activity, on the other hand, - lead to the conclusion that they have a common standard [5].

Meanwhile, the tendency for the generalized and classified presentation of the most important deontological rules of the French Bar nowadays finds its implementation in the acceptance by the Bar community of "The Procedure of Advocacy" which exists both in the form of the Unified Procedure (general French variant) and the created on its basis the Internal Procedures of the each Bar.

The Internal Procedure of the Paris Bar studied from the point of view of the comparative study of the Bar development gives a new view of the standard occupational and ethical prohibitions in the French barristers' activity [6].

The well-known institute of the lawyer's privilege has a number of conceptual and regulatory peculiarities. For example, it is prescribed that the barrister's professional secret (barrister privilege) is a part of public order and is of general nature, absolute and unrestricted in time. Due to his status, a barrister becomes a close confidant of the client, so the existence of professional secret meets public interests.

A barrister cannot be relieved from the duty of keeping the barrister privilege by neither his client nor any authority or, in general, by whosoever.

Apart from the barrister privilege, the French Bar introduces the concept of confidentiality as an independent element of professional activity.

Any exchange of information between barristers, either oral or written, on any medium (paper, electronic, facsimile, etc.) is confidential.

Communications between barristers, regardless of the medium used, shall in no case be the subject to seizure and cannot be used in court proceedings (including as a proof) or deprived of its confidential nature or otherwise aimed at disclosure.

In his relations with foreign barristers being beyond the jurisdiction of the European Union and prior to the exchange of confidential information, the barrister must ensure that his colleague's country has the rules providing for the confidentiality of communications [7]. In the absence thereof, the French barrister must enter into the confidentiality agreement with the foreign colleague or require his consent to accept the risk related to the exchange of non-confidential information.

Conclusions

Thus, the simultaneous existence of norms and rules of the barrister activity in Russia and France that makes the same professional standards in a criminal defense.

The method of comparative study of the Bar development also helps to find out actual differences between standards in a criminal defense of the French and Russian Bars, especially in restrictions of freedom to choose the procedural powers by defender [8].

Meanwhile, the Internal Procedure of Barristers in France contains highly categorical imperative in this respect:

Written powers from defendant to barrister by a special agreement are binding in the cases, when the latter is protecting or representing interests on a criminal case dealing with [9]:

- instituting criminal proceedings against judiciary for repayment purposes of material damage caused by his fault;
- application on the forged documents submitted by the opponent;
- an amicable agreement (conciliation with complainant);
- appeal in a cassation instances of judicial decrees, if the participation of barristers is not provided in this regard;
- in any appeal of judicial act on convict's behalf.

It is obvious, that in the absence of appropriate powers, the French barrister is not allowed to take any actions in this direction [10, 11]. This is a special standard expressed in a professional proscription.

Currently, not all the canonical principles of conducting criminal defense for the French Bar become the common European standards, as well as many criminal defense standards adopted in European Union countries are unlikely to adjust in the Russian criminal judicial procedure [12, 13].

The presence of values recognized by the world community in the field of human rights causes the desire to establish widely recognized protection standards of these rights, including the standards of legal protection.

However, it should be seen that global trends to an international unification of rules on conducting trans border types of activities (space exploration, air communication, maritime and land transport and etc.) inevitably will lead to the regulatory unification in the field of barrister activity on an international level, especially in the conditions of demographic and socio-political challenges of the time.

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