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HONESTY AND GOOD REPUTE OF THE LAWYER IN ECHR'S JUDGMENTS

This article addresses the issues and proposes on honesty and good repute of the lawyer as a fundamental principle of Ukrainian Rules of Advocates' Ethics. Analyzing the ECHR's practice, the author examines aspects of observance of this principle in practice of law and concludes that the requirement of honesty and good reputation of the lawyer follows from the nature, tasks and functions of the Bar.

Key words: *bar, practice of law, honesty and good repute of the lawyer, ECHR's practice, rules of advocates' ethics.*

The European Parliament resolution on the legal profession and the general interest in the functioning of legal systems of 23 March 2006 «recognizes fully the crucial role played by the legal professions in a democratic society to guarantee respect for fundamental rights, the rule of law and security in the application of law, both when lawyers represent and defend clients in Court and when they are giving their clients legal advice» [1].

The special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct (*Van der Mussele v. Belgium*, 23 November 1983, Series A no.70; *Casado Coca v. Spain*, 24 February 1994, § 46, Series A no.285-A; *Steur v. the Netherlands*, no. 39657/98, § 38, ECHR2003-XI; *Veraart v. the Netherlands*,

no.10807/04, § 51, 30 November 2006; and *Coutant v. France*(dec.), no.17155/03, 24 January 2008). Whilst they are subject to restrictions on their professional conduct, which must be discreet, honest and dignified (*Steur v. the Netherlands*,no. 39657/98, § 38, ECHR2003-XI).

For these reasons, *honesty and good repute of the lawyer* as a fundamental principle was supplemented by the Ukrainian Rules of Advocates' Ethics in 2019 (Art. 12¹, 44, 65).

Describing the limits of the conduct of lawyers, the ECHR in its practice refers to the principles developed by the Council of Bars and Law Societies of Europe (CCBE). The Charter of Core Principles of the European Legal Profession, which was adopted at the plenary session in Brussels on 24 November 2006, declares *the dignity and honor of the legal profession, and the integrity and good repute of the individual lawyer* as one of the core principles of the European legal profession: «To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honorable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. The disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession» [2]. The Code of Conduct for European Lawyers which was originally adopted at the CCBE Plenary Session held on 28 October 1988, «Trust and Personal Integrity»: «Relationships of trust can only exist if a *lawyer's personal honour, honesty and integrity* are beyond doubt. For the lawyer these traditional virtues are professional obligations» (2.2) [3].

Given that national courts as well as European Courts refer on a regular basis to the Charter and the Code of Conduct of the CCBE, it was felt that this question needs to be assessed very carefully.

The appeal to philosophy, legal doctrine, ethical codes of the law profession, which operate in different countries, and, above all, to life itself, allows us to formulate the thesis that the high moral qualities of a person are connected in the consciousness of each person with honesty. Honesty from the word «honor», that is worthy of respect.

The content of the categories «honesty of the lawyer», «good reputation of the lawyer» is being discussed in the legal community. The judgments about their subjective nature are inaccurate: rather, it can be argued that there is a subjective attitude to them, but they do not change depending on their interpretation.

Peter J. Henning rightly pointed out: «Finding the truth is the object of the judicial system, but it is not the governing principle for the lawyer. Instead, the focus for the lawyer should be honesty in dealing with clients, opponents, and the system» [4, p.214]. Truth and honesty, of course, are related, however, as concepts, they are not identical. Truth concerns the specific circumstances and facts that are established by the court. The integrity of the

lawyer focuses on the accuracy and reliability of the lawyer's allegations. Whenever the lawyer informs the court, the other party, lawyer colleagues or his client, this message must be honest. The principle of honesty governs the lawyer in all forms of representation, not just when he is acting on behalf of a client in the course of an adjudication. This principle applies to the expression of the facts, legal arguments or position in the negotiations.

The relevant passages of Opinion no. (2013) 16 on the relations between judges and lawyers, adopted by the Consultative Council of European Judges (CCJE) on 13-15 November 2013, concern to the principle of dignity and honor of the legal profession, and the integrity and good repute of the individual lawyer: «several ethical principles are common to both judges and lawyers, e.g. compliance with the law, professional secrecy, *integrity and dignity*, respect for litigants, competence, fairness and mutual respect (p. 9); a lawyer shall, while maintaining due respect and courtesy towards the court, defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him-or herself or to any other person. A lawyer shall never knowingly give false or misleading information to the court» (p. 20) [5].

The issues of honesty by lawyers are highlighted in ECHR's judgments. Thus, in the Court's view, a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof. It is impossible to prove the truth of value-judgments and it violates the freedom of expression, which is a fundamental part of the right guaranteed by article 10 of the Convention (*Lingens v. Austria*, July 8, 1986, Series A, No 10, § 46); *Oberschlick v. Austria* (No 1), May 23, 1991, Series A, No 204, § 63; *De Haes and Gijssels v. Belgium*, February 24, 1997, Reports 1997-I, § 42). «In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact» (*Brasillier v. France*, no.71343/01, § 37, 11April 2006; *Paturel v. France*, no.54968/00, §37, 22 December 2005, *Morice v. France*, no. 29369/10, §126, 23 April 2015). Lawyers cannot, moreover, make remarks that are so serious that they overstep the permissible expression of comments without a sound factual basis (*A v. Finland(dec.)*, no. 44998/98, 8 January 2004; *Morice v. France*, no. 29369/10, §126, 23 April 2015), nor can they proffer insults (*Coutant v. France(dec.)*, no.17155/03, 24 January2008). However, the pursuit of a just balance between the right to freedom of expression and professional ethics must not result in *avocats* being discouraged, for fear of disciplinary sanctions, from making clear their beliefs on such occasions (*Ezelin v. France*, no. 11800/85, §52, 26 April 1991).

Analyzing the problem of adherence to the principle of honesty and good repute, one should agree that «the growing public disquiet about lawyer ethics is not mainly because people think lawyers neglect their professional standards. Rather, the main problem is the belief among lawyers that the duty of loyalty to clients requires a lawyer to mislead. Specifically, the ethical

duty of confidentiality and the ethical duty of zealous advocacy are interpreted together to mean that lawyers must conceal some facts («confidentiality») while forcefully asserting others. This mis-coupling of these two key ethical duties has an inevitable tendency to produce a kind of partial-truth advocacy in which the lawyer knowingly distracts attention from the truth and fosters misconceptions in the minds of jurors and others. In the end, lawyers frequently succeed in creating false impressions or discrediting the truth and, as a result, people feel they cannot trust lawyers to be straight. Distrust of lawyers is not, however, just an image problem of an insular profession. Our basic civic order relies on the legal system and public respect for it. If the public cannot trust the lawyers who are entrusted with the legal system, there is a problem that casts a shadow on the integrity of the very concept of rule of law» [6, p. 1].

The draft Law of Ukraine «On Amendments to the Law of Ukraine «On Bar and Legal Practice» on the Rights of Advocates in Disciplinary Proceedings» dated May 16, 2019, № 10299, proposed a norm according to which «the grounds for bringing a lawyer to disciplinary liability is the commission of a disciplinary offense during a legal practice» [7]. It is impossible to support such a proposal on the basis that the lawyer's duties are not limited to the faithful performance of the contract with the client. Confidence in the profession of lawyer is also associated with the requirement of a respectable reputation of lawyers.

From the ECHR's judgment in the case of *Lecavičiene v. Lithuania*, it is possible to conclude how the ECHR evaluates the notion of high reputation of a lawyer. The ECHR underlined, that «higher standards were applicable to advocates, as only persons of untainted reputation could participate in the justice system without discrediting it. Therefore, when evaluating an advocate's conduct it was not sufficient to have regard only to whether the person obeyed the law. It was also pertinent to see a person's behaviour in the context of the legal norms that regulate the ethics of the advocates'profession» (*Lecavičiene v. Lithuania, no. 48427/09, § 14, 27 June 2017*).

Thus, the high moral reputation of a lawyer is a prerequisite for professional activity. The bounds of admissible actions of lawyers, based on the practice of the ECHR, lie in the usual restrictions on the conduct of members of the Bar, as reflected in the ten basic principles enumerated by the CCBE for European lawyers, with their particular reference to dignity, honour and integrity. This is due to the fact that ethical categories are determined by the nature, tasks and functions of the Bar.

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**THE PROBLEM OF ACCESS TO THE RESULTS OF COVERT
INVESTIGATIVE (DETECTIVE) ACTIONS: THE ECtHR CASE-LAW
OVERVIEW AND NATIONAL ASPECT OF THE ISSUE**

The following theses are devoted to research of the problem of access to the results of covert investigative (detective) actions in Ukraine through the ECtHR case-law overview. Based on the results of the research the key amendments to the Criminal Procedure Code of Ukraine were suggested.

Key words: *adequate facilities, European Court on Human Rights, covert investigative (detective) actions, access to case file, case law.*

One of the most important principle in criminal justice is that measures applied for the protection of victims and witnesses must be consistent with the rights of the accused. Article 6 (3) b of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as