

# **Limits of Legal Obligation of Attorney's Confidentiality in Criminal Proceedings**

## **Abstract**

The legal obligation of attorney's confidentiality imposed by the law is currently not only mentioned in professional discussions. However, the increased attention paid to this institute does not support it. There is a growing belief that it is being misused for the benefit of an attorney or for concealing criminal and other delict activity, resulting in increased pressure from the state to violate confidentiality obligations. This manifests itself in systematic or individual attempts to break it, or it leads to refusal of protection of the confidential relationship between an attorney and his client, which is a prerequisite for providing legal assistance.

The thesis describes in detail the meaning and purpose of the institute of attorney's duty of confidentiality and its position in the legal order. Its attention is focused especially on the area of the criminal law in which it is most threatened and therefore the application and protection of this institute in criminal proceedings is analyzed in detail. In order that the meaning of the above-mentioned provisions of the Code of Criminal Procedure can be concisely clarified, this is done in the thesis primarily from the practical point of view. For this purpose, the thesis draws quite abundantly from the case law, but also from specific criminal cases.

The greatest attention is paid to the legal regulation of examinations of premises used for advocacy, because it is during their implementation that attempts of law enforcement authorities to break the attorney's confidentiality obligation are the most obvious. The proper conduct of these inspections is supervised by the Chamber or its representative, who is always present at the inspections, and whose position in the criminal proceedings the thesis also analyzes in detail. In the area of interference with the duty of confidentiality, the issue of wiretapping the communication between the attorney and the client is also not neglected, where the law enforcement authorities also violate the confidential relationship between the attorney and the client.

The thesis concludes that at present there is a negative criminalization of legal aid provided by attorneys, who are so often considered to be accomplices of their clients in the case of client's criminal prosecution. This is also indicated by the current decision-making practice of the courts, which favors the state's interest in combating crime over the state's interest in protecting the confidentiality obligation imposed by it. Therefore, the thesis aims to point out application problems, to formulate controversial issues regarding the attorney's confidentiality obligation and to submit several *de lege ferenda* proposals to solve them.

### **Key words**

examinations

confidentiality obligation

attorney

Chamber