

CCBE Statement on professional Secrecy/legal professional privilege (LPP)

15/09/2017

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE is recognised as the voice of the European legal profession, representing European bars and law societies in their common interests before European and other international institutions. The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Areas of special concern include the right of access to justice, the digitisation of justice processes, the development of the rule of law, and the protection of the client through the promotion and defence of the core values of the profession.

The CCBE has been alerted by its members about infringements in several member countries which are jeopardising the confidentiality attached to the relationship between clients and their lawyers. The protection of the confidentiality of communications between clients and their lawyers arises through the Legal Professional Privilege of the clients or the obligation of professional secrecy which is imposed upon lawyers, and which creates a relationship of professional confidentiality.

Without going into detail about these infringements, we consider that they have three main causes:

- either, the lawyer is outright associated with their client, whose practices and activities must be unveiled at all costs. In some countries, lawyers are considered as accomplices of their clients;
- either, in these times of tackling organised crime and terrorism, any opportunity to find the “guilty parties” is seized, including by infringing upon the relationship of professional confidentiality between lawyers and clients;
- or, and this a serious new trend, lawyers acting as legal advisors or drafting legal documents, could be called upon to report to a specific administrative or fiscal authority the behaviour of certain clients or services requested by them, on the grounds of suspicious origin of funds or “aggressive” tax planning schemes.

Therefore, the Council of Bars and Law Societies of Europe wishes to firmly recall the following basic principles.

Among other ethical values such as independence or the avoidance of conflicts of interest, the relationship of professional confidentiality is a fundamental principle without which there would be no proper protection for clients and lawyers could not practice.

The relationship of professional confidentiality covers everything a client confides in a lawyer, whatever its nature, in order to be best advised and defended.

Contrary to a common misconception, the relationship of professional confidentiality, is intended not to protect lawyers but to protect their clients only.

Indeed, once a client steps into a law firm, they have the guarantee that they are allowed to say anything to their advisor. This is the condition upon which the advisor will be able to provide them with the best advice or representation. It would be impossible for lawyers to provide such advice or representation if the client, for fear of betrayal of that essential precondition of confidentiality, withholds information from his lawyer.

No informed advice or solid defence could possibly be provided based on partial, and thus insufficient, information.

So essential is this relationship of confidentiality to the rule of law, that there cannot be a fair trial without it.

This absolute guarantee of trust makes the confidentiality attaching to the relationship one of the cornerstones of individual freedom in a democratic society. It also contributes to the proper administration of justice, with the general interest of society on one hand, and the protection of individual freedoms, including freedom of defence, on the other.

The obligation to keep the client's information confidential applies also to lawyers, as the regulation of the profession subjects them to a strict code of conduct under which lawyers who advise their client against the law, and thus against society, not only jeopardise their own professional responsibility, but also run the risk of incurring disciplinary sanctions, the most serious of which is disbarment. Furthermore, in some jurisdictions, lawyers could face criminal charges for betrayal of professional secrecy, aggravated by the fact that they are themselves legal professionals.

It is the very nature of lawyers to be the recipient of their clients' confidential communications. Without the safeguard of confidentiality, there can be no trust. The keeping of these confidential communications are thus recognised as a fundamental and primary duty of lawyers.

“The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State” (article 2.3.1 of the Code of Conduct for European Lawyers).

This could not be better defined. But today, it must be more – and better – protected.