

Confidentiality of Communications in Attorney-Client Relationship

One of the keystones of the attorney-client relationship is confidentiality. In the Anglo-Saxon legal system, the concept that ensures the confidentiality of communications between an attorney and a client is referred to as the attorney-client privilege concept. The concept was originally based on the perception that the attorney should not be required to testify against the client:

<http://www.tms.org/pubs/journals/jom/matters/matters-9706.html>

Confidentiality issues in an attorney-client relationship in Azerbaijan are regulated by, *inter alia*, Law No 783-IQ of the Republic of Azerbaijan, *On Advocates and Activities of Advocates*, dated 28 December 1999 (the “**Advocates Law**”), the Criminal and Civil Procedure as well as the Administrative Violations Codes of the Republic of Azerbaijan. The Advocates Law establishes the principles of rule of law, independence, democracy, humanity, justice, publicity, and confidentiality, by which advocates are bound.

The confidentiality principle prevents advocates from being forced to testify or voluntarily testifying about the circumstances known to them or providing investigation bodies and courts with documents and other evidence collected by advocates in accordance with their job duties (Sub-Section 7.iii of the Advocates Law), thereby encouraging the clients to openly share thorough information, which, in turn, allows advocates to provide effective and efficient representation.

As appears from Sub-Section 7.iii, confidentiality applies when (i) a person to whom communication is made is acting as an advocate, *i.e.*, is a member of the collegium of advocates of the Republic of Azerbaijan and (ii) communication is made in accordance with the advocate’s job duties. Communications made to the advocate, while the latter does not fulfil his job duties, do not fall under the confidentiality principle and cannot be protected as such. In western jurisdictions, in addition to the above, communication must be made exclusively by the client to receive protection under the attorney-client privilege concept. In Azerbaijan, all information received by the advocate in connection with the representation of a client must be kept confidential irrespective of the source of information.

Unlike some countries where clients specify information that must be kept confidential, in Azerbaijan, all information communicated by the client to the attorney (be it verbally, in writing, via e-mail) must be kept in secret in accordance with Sub-Section 7.iv of the Advocates Law.

In exceptional circumstances, the right to confidentiality can be waived. These exceptions are contemplated in the Criminal Procedure Code. Pursuant to Sub-Section 92.10.2 of the Criminal Procedure Code, confidential information can be disclosed (i) in order to prevent the client from preparing and committing a new crime (the crime exception) and (ii) when a complaint is filed by a client against an attorney for improper representation (the self-defence exception). The crime exception applies only to the future crime, and information passed in connection with the already committed crime is protected under confidentiality. The self-defence exception can be used only to a limited extent, *i.e.*, the attorney is allowed to use only that information, which is important in challenging the client’s arguments. The attorney should not use confidential information for his own benefit.

Besides the above-mentioned exceptions, confidential information can be disclosed upon the client’s consent.

In some countries, the privilege stays in effect even after the attorney-client relationship ends, and even after the client dies. It is not clear from Azerbaijani laws how long the information needs to be kept confidential and whether the death of the client serves as a ground to disclose confidential information.

Unlike communications between a client and an attorney, communications between a corporation and its in-house counsel lack statutory regulation, more specifically, there are no laws which ensure the confidentiality of communications between the in-house counsel and his corporation and such confidentiality can be granted only on the basis of a contract entered into between the corporation and its in-house counsel. Therefore, whenever such information is requested by court or investigative bodies in the course of their functions, unless the laws provide otherwise, the in-house counsel is obligated to provide the information to these bodies.

**PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER
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