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# The Doctrine of Lawyer's Professional Secrecy: Nature, Standards of Protection, and Issues of Application in Civil Proceedings

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**Abstract**

***This article analyses the scope and limitations of legal professional secrecy in the context of the right to a fair trial and the proper administration of justice. It argues that lawyer–client privilege is a fundamental safeguard of the rule of law, enabling open communication and effective legal representation. The privilege covers communications related to legal advice or representation, regardless of form or procedural stage. The European Court of Human Rights and the Court of Justice of the European Union recognise it as an essential element of Article 6 ECHR, while emphasising that it is not absolute and may be limited only where justified by law, a legitimate aim and proportionality. Comparative practice shows that several jurisdictions, including European states and the United States, provide limited exceptions to confidentiality, such as lawyer self-defence, prevention of serious harm, or client waiver. The article further examines the Lithuanian legal framework, concluding that its strict approach to professional secrecy raises proportionality concerns and may conflict with Article 6 ECHR standards. It proposes clearly defined statutory exceptions permitting limited disclosure under judicial control, thereby balancing client protection with the requirements of justice and fair proceedings.***

**Keywords**

*legal professional privilege • right to a fair trial • proportionality principle • lawyer–client confidentiality*

## INTRODUCTION

The role of a lawyer in the legal system is multifaceted, requiring not only high professional qualifications, but also strict adherence to ethical principles. Much like a judge, a lawyer analyses the facts of a case, identifies the relevant legal provisions and applies them to the specific situation. However, unlike a judge, a lawyer acts exclusively in their client's interests. Therefore, their duty is not only to assess the situation legally, but also to provide their client with thorough and objective information about possible scenarios for how the case could develop—both favourable and unfavourable.

The nature of a lawyer's practice is inseparable from the principle of professional independence. This means that a lawyer is free from any external or internal pressure. A lawyer must remain independent not only from the client's expectations or public opinion, but also from personal biases or subjective assessments of the situation. Only by ensuring this independence, can it be guaranteed that the legal assistance provided to the client will be objective, well-founded and oriented towards a lawful outcome.

At the same time, the legal profession is founded on the principles of integrity and loyalty to the client. Lawyers have a duty to defend their clients' rights and legitimate interests courageously, honestly and tenaciously, while avoiding misleading statements and false information. It is in this context that lawyers–client privilege is particularly significant, as it enables open, trusting communication between lawyer and client. By ensuring confidentiality, the client can disclose all relevant information without fear, and the lawyer can properly fulfil their professional duties and effectively defend the client's interests.

Lawyer's professional secrecy is one of the fundamental guarantees of the legal profession, closely linked to the client's right to defence and to a fair trial. Its essence is reflected in the relationship of trust between the lawyer and the client, without which the provision of effective legal assistance would not be possible (Drakšas, 2022, p. 304). Professional secrecy is enshrined both in national law and at the international level, including Articles 6 and 8 of the European Convention on Human Rights (hereinafter the ECHR) and Articles 7 and 47 of the Charter of Fundamental Rights of the European Union (hereinafter the Charter), which

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guarantee the right to respect for private life and confidentiality of correspondence, as well as the right to judicial protection. Despite the recognition of these rights, the content, scope and objectives of professional secrecy continue to be developed in legal doctrine and case law, taking into account the evolving needs of legal regulation and practice.

Lawyer's professional secrecy may be analysed from two perspectives—substantive and procedural. The substantive dimension encompasses the protection of confidential information, i.e. all communication between the lawyer and the client, including legal advice, case strategy, documents and electronic data. This protection ensures that the client can freely disclose all the circumstances of the case without fear that the information will be misused or disclosed to third parties.

The procedural dimension relates to the protection mechanisms within judicial proceedings that ensure confidential information obtained by a lawyer cannot be used as evidence in civil or other proceedings. Furthermore, lawyers cannot be compelled to disclose such information, thereby guaranteeing their independence and protecting their clients' rights. The procedural aspect ensures the effectiveness of substantive protection: clients can communicate openly with their lawyers, who can perform their functions independently and free from pressure by the state or other parties.

This dual approach, combining substantive and procedural dimensions, demonstrates that a lawyer's professional secrecy is not merely an abstract ethical duty. Rather, it constitutes a concrete legal safeguard that encompasses both its content and the mechanisms that ensure the protection of clients' rights, the independence of lawyers and the implementation of the principles of justice in contemporary law.

Thus, a lawyer's professional secrecy is rooted in their clients' trust and independence, ensuring effective legal assistance is provided. Confidentiality enables clients to openly share all the circumstances of their case, facilitating effective legal assistance and reinforcing the right to defence. From this perspective, professional secrecy is indispensable; without it, lawyers would be unable to fulfil their duties properly, and clients would be reluctant to disclose all relevant information.

However, this principle of protection also gives rise to a practical problem. Information obtained by a lawyer and legally protected by professional secrecy may be relevant as evidence in civil proceedings and could directly affect the outcome of the case. The conflict between protecting confidentiality and effectively gathering evidence creates a dilemma: while the confidentiality of lawyer–client communication is essential for protecting the client's rights and the lawyer's independence, such confidentiality may prevent the court from accessing all the information necessary for adjudicating the case.

Therefore, it is necessary to consider how to reconcile the protection of professional secrecy with the courts' need to obtain all the information necessary to establish the truth of the case, and to ensure not only the client's trust, but also a fair trial. The tension between substantive protection (confidentiality) and procedural considerations (evidence availability) is the core scientific problem addressed in this article.

In recent years, international regulation has been strengthened. The Council of Europe prepared the Council of Europe Convention for the Protection of the Profession of Lawyer, which was adopted by its Committee of Ministers in 2025 and opened for signature. The Convention reinforces the independence of lawyers, the protection of professional secrecy and broader professional guarantees, thereby confirming the international relevance and significance of the topic. These new instruments demonstrate that protecting lawyers' professional secrecy is not just a national or doctrinal issue anymore, but an important subject of international legal regulation. This reflects the need to safeguard professional secrecy and the growing role of the legal profession within the justice system.

This article aims to reveal the nature of the lawyer's professional secrecy doctrine, the standards of its protection and the issues related to its application in civil proceedings. To achieve this, the following objectives have been set: (1) examining the nature and objectives of lawyers' professional secrecy; (2) discussing the standards for protecting lawyers' professional secrecy in the case law of the European Court of Human Rights and the Court of Justice of the European Union; and (3) analysing the possibilities and limits of using information covered by lawyers' professional secrecy as evidence in civil proceedings.

In writing the article, systemic, analytical, comparative and document and court decision analysis methods were applied. The systemic and analytical methods were used to examine the relationship between professional secrecy and the broader legal framework, as well as its content and limitations, while the comparative method was applied to compare different European approaches. The document and court decision analysis methods were used to examine relevant legal sources and case law.

## RESULTS AND DISCUSSION

### The nature and purpose of advocate's professional secrecy

The institution of an advocate's professional secrecy is one of the essential prerequisites for effectively exercising the right to defence and maintaining a relationship of trust between an advocate and their client. This trust can only be established if the client is confident that any information disclosed to the advocate will remain confidential and will not be shared

with third parties (André and Others v. France, 2008). This expectation of confidentiality is fundamental to an advocate's professional activity, enabling clients to openly and freely disclose all relevant circumstances, including sensitive, uncomfortable or potentially detrimental ones. Only with full knowledge of the factual circumstances can an advocate properly assess the situation, choose an appropriate defence strategy and represent the client diligently and independently. For this reason, professional secrecy is regarded not merely as a professional privilege, but as a core duty of the legal profession and an essential element of the rule of law. The Court of Justice of the European Union has recognised legal professional privilege as one of the general principles of EU law, derived from the common values and constitutional traditions of the Member States (AM & S Europe v. Commission, 1982). Professional secrecy encompasses all information communicated by the client in connection with legal representation, including sensitive information that could potentially be detrimental to the client. The European Court of Human Rights (hereafter 'the ECtHR') has emphasised that it is clearly in the public interest for anyone who wishes to consult a lawyer to be free to do so in a way that facilitates open and unrestricted communication. For this reason, the relationship between a lawyer and their client is, in principle, privileged (Altay v. Turkey, 2019). A lawyer must also act loyally towards their client. This protection is necessary not only to safeguard the client's individual interests, but also to ensure the proper administration of justice. Only by having full access to relevant information can a lawyer effectively defend their client's rights and legitimate interests.

The institution of professional secrecy is closely linked to the advocate's duties of independence and loyalty towards the client. Historically, confidentiality originated from the ethical and honour-based obligations of advocates not to betray information entrusted to them. Over time, this concept evolved into a modern legal principle focused primarily on protecting the client's interests rather than the lawyer's personal privilege. Consequently, contemporary legal doctrine recognises that confidentiality belongs to the client and may only be waived by the client.

In the practice of both the European Court of Human Rights (Altay v. Turkey, 2019; Michaud v. France, 2012; Niemietz v. Germany, 1992) and the Court of Justice of the European Union (Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers v. Vlaamse Regering, 2022), it is also recognised that lawyer–client privilege covers all communication between a lawyer and their client, including legal advice, and is not limited solely to the proceedings of a case in court.

The purpose of advocate's professional secrecy extends beyond the protection of individual rights. Advocates fulfil a dual role in democratic societies: they defend the interests of their clients while also contributing to the implementation of justice and the protection of the rule of law. Therefore, professional secrecy serves both private and public interests by safeguarding trust in the legal profession, ensuring effective legal defence and supporting the proper functioning of the justice system.

**Standards for the protection of a lawyer's professional secrecy in the case law of the European Court of Human Rights and the Court of Justice of the European Union**

Having regard to their essential function in a democratic society—namely, the representation of litigants and the safeguarding of public confidence in the judiciary—advocates enjoy a specific and elevated status under the Convention, placing them at the heart of the administration of justice. In performing their professional duties, advocates contribute not only to the proper administration of justice but also to the maintenance of public confidence therein (Rodriguez Ravelo v. Spain, 2016).

This particular status entails, *inter alia*, enhanced protection of the confidentiality of lawyer–client communications under Article 8 of the Convention, as well as guarantees related to the right to a fair trial under Article 6.

Article 8 provides reinforced protection for all communications between an advocate and their client (Denysyuk and Others v. Ukraine, 2025), reflecting the pivotal role of advocates in ensuring both the right to a fair trial and public trust in the judicial process. This protection extends to all forms of communication, including letters, telephone or oral conversations and electronic correspondence (Klaus Müller v. Germany, 2020). The Court has emphasised that no distinction should be made between different types of lawyer–client communications based on their content or purpose, recognising the inherent difficulty of drawing a clear line between correspondence relating directly to contemplated or ongoing litigation and correspondence of a more general advisory nature (Altay v. Turkey, 2019*)*. This approach underscores the principle that all communications with an advocate must be afforded robust protection to safeguard the client's rights and the integrity of the legal process.

According to Article 7 of the Charter, the guaranteed rights correspond to those guaranteed under Article 8 of the ECHR. Pursuant to Article 52(3) of the Charter, the Court of Justice of the European Union, when interpreting Articles 7 and 47 of the Charter, the Court of Justice of the European Union must take into account the minimum level of protection enshrined in Articles 8 and 6 of the ECHR, as interpreted by the European Court of Human Rights (Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers v. Vlaamse Regering, 2022) For the purposes of applying Article 7 of the Charter, the protection of professional secrecy covers more than just a client's defence in court; it also protects the relationship between a lawyer and a client outside the context of judicial proceedings

(although such protection is applied more strictly in relation to this task). Article 7 of the Charter ensures the confidentiality of legal advice in terms of both its content and its existence (Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers v Vlaamse Regering, 2022).

Importantly, for the purposes of Article 8, it is not decisive whether, at the time of a particular communication, the advocate had entered into a formal legal representation agreement with the client (Denysyuk and Others v. Ukraine, 2025). Advocates who do not represent clients in court as members of the Bar, but instead practice primarily as legal advisers, are nonetheless entitled to certain procedural safeguards in their interactions with clients. These protections help ensure the confidentiality and integrity of the lawyer–client relationship, even where the advocate's role is predominantly advisory rather than litigious (Bersheda and Rybolovlev v. Monaco, 2024; Kruglov and Others v. Russia, 2020).

When assessing the lawyer–client relationship, the Court of Justice of the European Union applies an autonomous criterion of independence. This may result in the non-application of protection, regardless of how a lawyer's status is defined under national law. A lawyer is considered 'independent' only if they are not employed by the client, act as an external legal adviser and are bound by professional liability and ethical obligations (PJ v. European Union Intellectual Property Office (EUIPO), Erdmann & Rossi GmbH and PC v. European Union Intellectual Property Office (EUIPO), Erdmann & Rossi GmbH, 2022). Accordingly, under the Charter, protection does not extend to communications involving in-house lawyers, irrespective of their status under national law (Akzo Nobel Chemicals and Akcros Chemicals v. Commission, 2010a).

At the same time, the protection of professional secrecy forms an integral part of the rights of the defence under Article 6 of the Convention. It is closely linked to the client's right not to incriminate themselves, which presupposes that the authorities must establish their case without relying on evidence obtained through coercion, oppression, or any methods that contravene the will of the person charged (Kırdök and Others v. Turkey, 2019). This principle underscores the essential role of advocates in safeguarding both the procedural rights of their clients and the integrity of the judicial process.

When considering the relationship between the confidentiality of correspondence between an advocate and their client, and the right to a fair trial, it becomes clear that the right to a fair trial is inherently connected to judicial proceedings. „If an advocate were required to cooperate with public authorities and disclose information obtained in the course of legal consultations during judicial proceedings or in preparation for them, they would be unable to properly perform their functions of advising, defending and representing the client, and the latter would consequently be deprived of the rights guaranteed under Article 6 of the ECHR" (Ordre des barreaux francophones et germanophone and Others, 2007). Therefore, under Article 47 of the Charter and Article 6 of the ECHR, a violation may be established if a person is unable to defend their rights effectively in court, or if the confidentiality of consultations intended to support the right to defence is not ensured.

Although professional secrecy constitutes a cornerstone of the administration of justice in a democratic society, it is not absolute or beyond limitation. The protection afforded to confidential communications between an advocate and their client is subject to certain exceptions where overriding public or legal interests justify interference (Michaud v. France, 2012). This nuanced approach reflects the need to balance the essential role of professional secrecy in ensuring effective legal representation with the legitimate requirements of the justice system, including the investigation and prevention of serious crime.

In assessing an alleged violation of Article 8, the Court systematically examines whether any interference with the confidentiality of lawyer–client communications is proportionate to the legitimate aim pursued. In several cases, the Court has found a breach of Article 8 on account of the quality or clarity of the law (Vasil Vasilev v. Bulgaria, 2022) or, more broadly, on the basis that the interference was not 'in accordance with the law' (Denysyuk and Others v. Ukraine, 2025; Särgava v. Estonia, 2021). However, in most instances, the Court's principal analysis centres on the proportionality of the measure.

In evaluating proportionality, the Court takes into account a range of factors, including: the seriousness of the offence under investigation; the authorities' suspicions regarding the advocate's involvement; the existence of prior or subsequent judicial authorisation (warrant) and the circumstances in which it was issued; the other evidence available at the time; the content and scope of the warrant; the manner in which any search, inspection, or seizure was conducted, including whether independent observers were present and whether a data processing protocol was applied; and the potential repercussions for the professional work and reputation of the advocate affected by the measure (Kruglov and Others v. Russia, 2020; Sérvulo & Associados – Sociedade de Advogados, RL and Others v. Portugal, 2015).

This approach reflects the Court's careful balancing of the competing interests at stake: safeguarding the essential confidentiality of the advocate–client relationship, while allowing for legitimate investigative needs, always ensuring that any interference is strictly necessary and proportionate in a democratic society.

The right enshrined in Article 7 of the Charter is not absolute either, and must be considered in the context of its societal purpose. It may be subject to restrictions provided by law that do not alter its essence and that are necessary, based on the

principle of proportionality, to achieve objectives recognised by the EU as being of general interest or to protect the rights and freedoms of others (Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers v. Vlaamse Regering, 2022; Privacy International, 2020).

However, the protection of a lawyer's professional secrecy under both Article 8 of the ECHR and Article 7 of the Charter does not extend to all of a lawyer's activities. There are instances in which a lawyer may act outside their 2018 usual role, for example when they are neither representing a client nor providing legal advice. In such cases, such as when acting as an intermediary or performing legal tasks without the necessary lawyer–client relationship, the lawyer's activities are treated similarly to those of other professionals. The nature of these activities does not justify the protection of professional secrecy, which is primarily linked to a lawyer's specific societal function of enabling them to perform their core task of defending the rights of legal subjects (Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers v Vlaamse Regering, 2022).

Distinguishing between a lawyer's activities that fall within their usual professional remit and those that do not presents significant theoretical and practical challenges. This distinction is particularly important when determining the extent to which professional secrecy applies.

In this context, it is essential to maintain an appropriate balance. On the one hand, an overly broad interpretation of a lawyer's professional secrecy could result in the unjustified extension of protection to cases where the lawyer is acting not as a legal services provider, but as a professional in other fields, such as finance, business or intermediary services. This would mean using the professional secrecy framework outside its intended purpose, which would distort its essence and create potential for abuse.

Conversely, an overly narrow definition of professional secrecy could disproportionately restrict the confidentiality of the lawyer–client relationship. This could lead to unacceptable interference in this relationship, which is an essential element of the right to defence and the right to a fair trial. Such interference would undermine the client's trust in the lawyer and could negatively affect the effectiveness of the justice system.

Accordingly, the limits of professional secrecy must be defined to ensure the effective protection of clients' rights while preventing this protection from being extended beyond the scope of a lawyer's professional activities.

In conclusion, advocate–client confidentiality is not merely a professional obligation but a fundamental guarantee of the right to defence, a fair trial and the proper administration of justice. Its protection covers all communications between a lawyer and a client, including both their content and existence. Although this protection is not absolute, any restrictions must be prescribed by law, pursue a legitimate aim, and remain proportionate and necessary in a democratic society.

The confidentiality of lawyer–client communications is firmly protected under Articles 6 and 8 of the European Convention on Human Rights and Articles 7 and 47 of the Charter of Fundamental Rights of the European Union. This protection applies broadly to legal advice and representation, ensuring public confidence in the legal profession and the justice system.

However, this protection is not absolute. Its scope is limited both functionally and substantively. On the one hand, it applies only where the advocate acts within their core professional role of providing legal advice or representation; activities falling outside this role may not benefit from the same level of protection. On the other hand, interferences with confidentiality may be justified where they are prescribed by law, pursue a legitimate aim and satisfy the requirement of proportionality.

Accordingly, the legal framework reflects a careful balance: it ensures a high level of protection for professional secrecy as a cornerstone of effective legal defence, while at the same time allowing for justified limitations in the interests of justice and broader public concerns.

**The use of a lawyer's professional secrecy as evidence in civil proceedings: practice in European Countries and Lithuania**

A lawyer's professional secrecy is a fundamental element of the rule of law and the administration of justice, ensuring confidential communication between a lawyer and a client as well as the client's right to effective defence. Its protection strengthens trust in the legal profession and supports the proper functioning of the justice system. However, in civil proceedings, the relationship between professional secrecy and the duty to disclose evidence raises complex legal and practical issues. Consistent case law recognises that ensuring these confidentiality guarantees comes at a cost: some evidence that may be relevant to the case will not be accessible to the court during the dispute resolution process (Newbold, 1990, p. 472).

Civil proceedings are based on the parties' duty to present relevant evidence in order to ensure a comprehensive examination of the case. However, a lawyer's professional secrecy restricts the disclosure of certain information, creating tension between the principles of effective adjudication, adversarial procedure and confidentiality. This raises the question of to what extent information held by a lawyer may be used as evidence in civil proceedings and what safeguards are necessary to balance these competing interests.

The approach of European countries to this issue is not uniform. Different jurisdictions adopt different models regarding the scope of a lawyer's professional secrecy, the grounds

for limiting it and the rules of evidence. These models are influenced by both national legal traditions and international human rights standards. This section therefore aims to analyse the particularities of using a lawyer's professional secrecy as a potential source of evidence in civil proceedings, discuss the practices of European countries and evaluate Lithuanian legal regulations. To achieve these objectives, it is first necessary to examine the legal frameworks and constitutional jurisprudence of individual European states, which reveal the limits of professional secrecy protection and its exceptions.

The Belgian legal system is one example where the content and limits of a lawyer's professional secrecy have been elaborated at the level of constitutional review. In its decision on 14 June 2006, the Belgian Constitutional Court identified two exceptions to the protection of professional secrecy. The necessity or greater need exception applies when a lawyer is required to reveal privileged information. Additionally, lawyer–client secrecy may be waived due to an overriding interest (Professional Secrecy of Lawyers in Europe, 2013, p. 58). This is assessed in situations involving a serious, imminent threat to human life or health. This may occur, for instance, when a lawyer becomes aware of a planned crime, or when they learn about urgent medical assistance required for children in the context of divorce proceedings.

In Belgium, a lawyer may disclose information protected by lawyer–client secrecy if it is necessary to defend themselves against a claim brought by the client, and if such disclosure is required to prove their innocence (Professional Secrecy of Lawyers in Europe, 2013, p. 60). This exception is justified as a measure to ensure the lawyer's right to a fair trial. In Bulgaria, lawyer–client professional secrecy is also not absolute. A list of exceptions is provided, which cannot be interpreted broadly. Under the Anti-Money Laundering Act and the Measures against the Financing of Terrorism Act, lawyers are required to report suspicious transactions or activities (Professional Secrecy of Lawyers in Europe, 2013, p. 79).

In Cyprus, exceptions to a lawyer's professional secrecy are applied quite broadly. According to Article 15 of the Constitution of Cyprus, the protection of confidentiality is not absolute—it may be limited for higher values. These include the security of the Republic, the protection of the constitutional order, public safety and order, safeguarding public health and protecting the rights and freedoms of others as guaranteed by the Constitution (Professional Secrecy of Lawyers in Europe, 2013, p. 93). Therefore, a lawyer's professional secrecy in Cyprus may be disclosed when necessary to protect these fundamental constitutional values.

In France, the duty of confidentiality arising from a lawyer's professional secrecy is not absolute either. It does not apply when the lawyer and their client become opposing parties in subsequent proceedings, nor when disclosure is necessary to prevent a crime or protect minors (Jansen, 2022, p. 200). The French Supreme Court has ruled that this duty is a matter of public policy and should generally be observed in and out of court (Jansen, 2022, p. 200). If a party to a case unlawfully obtains information constituting a lawyer's professional secrecy from the opposing party, the court must recognise it as inadmissible evidence in the proceedings (Jansen, 2022, p. 201).

In Italy, under Article 28(4) of the Codice Deontologico Forense, a lawyer may derogate from the duty of professional secrecy where disclosure is necessary for the conduct of the defence, to prevent the commission of a particularly serious offence, to establish factual circumstances in a dispute between the lawyer and the client or assisted party, or in disciplinary proceedings. In all cases, disclosure must be limited to what is strictly necessary for the protected purpose (Consiglio Nazionale Forense 2014).

In Germany, a lawyer's professional secrecy is also limited in judicial proceedings. Such information is considered admissible evidence if it is necessary for the lawyer to defend themselves against allegations of misconduct by their client in subsequent proceedings, or if the client consents to the disclosure of this information (Jansen, 2022, p. 205). Similarly, in the Netherlands, the duty of confidentiality arising from a lawyer's professional secrecy may be lifted based on various statutory provisions, such as those related to anti-money laundering. It should be noted that the money-laundering exception derives from the EU legal framework, in particular Directive (EU) 2015/849 and Regulation (EU) 2024/1624. Furthermore, a lawyer may be relieved of their obligation to maintain confidentiality if disclosure is necessary to prevent their client from committing a serious crime or in similar situations (Jansen, 2022, p. 210).

According to case law from the European Court of Human Rights, the application of privilege requires a two-step analysis. Firstly, it must be determined whether the privilege is granted under national law. Secondly, even if national law does not recognise the privilege, the court must assess whether the compulsory disclosure of documents or information would violate the respondent's right to a fair trial under Article 6 of the ECHR. If a violation is likely, enforcing such a procedure to obtain a judgement or impose a sanction may itself constitute a breach of Article 6, even if national law does not provide for the privilege (Hollander, 2021, p. 382).

Based on the legal frameworks and judicial practices of other countries, there are specific situations in which lawyers are permitted to disclose professional secrets, and this information can be used as evidence in proceedings. This raises the question of whether Lithuanian law allows a lawyer to disclose professional secrecy under certain circumstances.

According to the Lithuanian Law on the Bar, using information that constitutes a lawyer's professional secrecy as evidence is prohibited. A lawyer is immune from being examined as

a witness regarding knowledge of professional secrecy (Civil Procedure Code, Article 189(2)(1); Law on the Bar, Article 46(1)), the disclosure, obtaining, or use of information constituting a lawyer's professional secrecy are prohibited under Article 46(5) of the Law on the Bar. Read together, these provisions indicate that the Law on the Bar does not establish statutory exceptions permitting the disclosure or use of information covered by professional secrecy as evidence during judicial proceedings.

The Law on the Bar establishes client confidentiality as a fundamental principle of an advocate's professional activity (Article 5(4)) and imposes a duty on advocates to safeguard professional secrecy and not disclose it (Article 39(3)). At the same time, Article 39(1)(1) of the Law on the Bar requires advocates to comply with the Lithuanian Code of Ethics for Lawyers.

Article 8 of the Lithuanian Code of Ethics for Lawyers establishes limited exceptions to the duty of professional secrecy, specifying circumstances in which a lawyer may disclose confidential information without the client's consent. These exceptions only arise in extraordinary situations, such as when disclosure is strictly necessary to preserve human life, to protect the rights and legitimate interests of the client, the client's heir or legal successor, or to defend the advocate's own violated rights in a dispute with the client, in the latter case only to the extent necessary for the proper resolution of the dispute.

The Lithuanian Code of Ethics for Lawyers is a publicly accessible professional regulatory instrument adopted by the Lithuanian Bar and governing the ethical duties and professional conduct of advocates. It is therefore not an unpublished internal document, but a publicly available instrument applicable to members of the legal profession. However, it is not a law enacted by the legislature and does not have the same normative status as the Law on the Bar.

The coexistence of the statutory prohibition established in Article 46(5) of the Law on the Bar and the exceptions established in Article 8 of the Code of Ethics for Lawyers creates a legal uncertainty concerning the scope and legal effect of these exceptions (Maculevičienė, 2026, p. 107). On the one hand, the Law on the Bar establishes a general prohibition on the disclosure and use of information constituting professional secrecy and does not itself provide for statutory exceptions. On the other hand, the Code of Ethics for Lawyers permits disclosure without the client's consent in certain strictly defined circumstances. As a professional regulatory instrument, however, the Code of Ethics for Lawyers cannot independently amend, override, or create exceptions to a statutory prohibition established by the Law on the Bar.

Consequently, the exceptions provided for in Article 8 of the Code of Ethics for Lawyers do not provide the same level of legal certainty as statutory exceptions would. This is particularly significant where the disclosure of professional secrecy and the use of such information as evidence in judicial proceedings are concerned. Legislation must comply with the principle of systematicity, meaning that a professional regulatory instrument implementing statutory provisions cannot amend the law itself or establish rules that conflict with statutory provisions. Therefore, to ensure the legality, clarity and predictability of the regulation of advocate's professional secrecy, the exceptions currently established in Article 8 of the Code of Ethics for Lawyers should be incorporated directly into Article 46(5) of the Law on the Bar.

Such an amendment would provide a clear statutory basis for the limited disclosure of professional secrecy without the client's consent, while ensuring that the exceptions remain narrowly defined and subject to the protection of the client's legitimate interests. In summary, the regulation of lawyer professional secrecy in many European jurisdictions is not absolute, as clearly defined statutory exceptions may permit the disclosure or use of protected information as evidence. In comparison, the Lithuanian legal framework raises concerns regarding the proportionality and legal certainty of the current regulation. The exceptions currently established in Article 8 of the Lithuanian Code of Ethics for Lawyers correspond, in substance, to exceptions recognised in other European jurisdictions. Therefore, these exceptions should be incorporated directly into Article 46(5) of the Law on the Bar, providing a clear statutory basis for the limited disclosure and use of professional secrecy while safeguarding the client's legitimate interests.

## CONCLUSION

Legal professional secrecy is essential to the right to defence and the proper administration of justice, allowing clients to communicate openly with their lawyers and enabling advocates to provide effective, diligent and independent representation. Its protection safeguards both individual rights and broader public interests, highlighting its crucial role in upholding the rule of law.

Lawyer–client privilege covers all communications relating to the client, whether provided by the client or received by the lawyer. This includes legal advice, document preparation, information collection and communications in writing, by telephone, or in person. The issue does not need to be brought before a court for lawyer–client privilege to apply, and the legal services likewise do not need to be performed in a courtroom for that privilege to take effect.

Both the European Court of Human Rights and the Court of Justice of the European Union recognise the professional

secrecy of lawyers as a fundamental component of the right to a fair trial and the proper administration of justice. This secrecy encompasses all forms of communication between lawyers and their clients. However, this protection is not absolute. It is limited to the lawyer's core professional functions, and any interference must be prescribed by law, pursue a legitimate aim and comply with the principle of proportionality. This reflects a careful balance between confidentiality and public or legal interests. It is important to distinguish between activities that constitute a lawyer's professional duties and those that do not. Professional secrecy only applies to communications relating to the provision of legal advice or representation. This ensures that the protection is neither misapplied nor unduly restricted.

In international practice, the protection of lawyer–client privilege is not absolute. In many European countries and the United States, it may be limited in cases where it is necessary to defend against a lawsuit filed by the client, to prevent serious crimes or protect human life or health, or if the client waives it. A complete prohibition on disclosing lawyer–client privilege could be incompatible with Article 6 of the European Convention on Human Rights, as it restricts the lawyer's ability to defend themselves effectively. Legal doctrine and foreign case law emphasise that any protection of privilege must be balanced against the requirements of due process, the interests of society and those of the parties involved.

The Lithuanian legal framework currently imposes an absolute prohibition on the disclosure and use of information constituting advocate's professional secrecy, which raises concerns regarding its compatibility with international practice and the principle of proportionality under Article 6 of the ECHR. Therefore, clear and legally grounded statutory exceptions are necessary to permit the disclosure and use of professional secrets as evidence in strictly defined circumstances, while safeguarding the client's interests and allowing the court to assess their admissibility. Accordingly, Article 46(5) of the Law on the Bar should be amended by incorporating into the statutory framework the exceptions currently established in Article 8 of the Lithuanian Code of Ethics for Lawyers, specifying the circumstances in which an advocate may disclose confidential information without the client's consent.

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