



ATTORNEY-CLIENT PRIVILEGE IN FINLAND AND NEARBY COUNTRIES

1 FINLAND

1.1 Legislation

Main provisions regulating attorney-client privilege in Finland can be found in Advocates Act (496/1958), Code of Judicial Procedure (4/1734), Penal Code (39/1889) and Code of Conduct for Advocates.

1.1.1 *Main Rules*

According to Advocates Act an advocate or his assistant shall not, without due permission, disclose the secrets of an individual or family or business or professional secrets which have come to his knowledge in the course of his professional activity.

According to Code of Judicial Procedure an attorney, a counsel or an assistant thereof shall not without permission disclose a private or family secret entrusted to them by a client, nor similar confidential information received by them in the course of their duties

- In addition, the Code of Judicial Procedure states that an attorney or counsel shall not testify, in respect of what the client has entrusted to him / her for the pursuit of the case, unless the client consents to such a testimony.

1.1.2 *Exceptions to the main rules*

There are two exceptions to the above mentioned main rules concerning attorney-client privilege in Finland.

1. According to Part Three of the Section 23 of Chapter 17 of Code of Judicial Procedure any person, excluding the counsel of the defendant, may be ordered to testify in cases for which the accused is charged for an offence punishable by imprisonment for six years or more or for an attempt of or participation in such an offence. Besides the aforementioned exception, the provision in Code of Judicial Procedure only applies to information which the attorney has been entrusted with *for the pursuit of the case*. Therefore it is much debated whether the provision of attorney-client privilege laid out in Advocates Act applies to *all* secrets that a client may entrust their attorney with. This contradiction has to be resolved in case-specific consideration by the judge.
 - The Supreme Court of Finland has established in a ruling (KKO 2003:119) that attorney-client privilege does *not* extend to counselling, given by an attorney, which is not connected to an ongoing or foreseeable judicial proceeding or proceedings in a public authority.

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- The European Court of Human Rights has also concluded that the text in the Code of Judicial Procedure is unclear as far as it concerns confidentiality.
 - The Ministry of Justice has examined the need to amend the relevant legislation. As a result of that they are about to introduce a Government bill with a law proposal to the Parliament during this spring. According to officials in the Ministry of Justice, content of the law proposal is not yet completely agreed, which may delay its introduction to the Parliament.
2. According to the Act on Prevention and Clearing of Money Laundering (68/1998) the attorney-client privilege is overridden in cases of buying or selling real estate or business units on behalf of the client, as well as managing the client's funds, securities or other financial resources. The same applies in cases of opening or managing bank or savings or book-entry accounts, or if the legal counsel designs (and/or realises the designs) to found or direct companies or organises the funds or the foundation, company or other corporation required to govern the company. Overall, the principle is applied when a legal counsel acts for and on behalf of their client in business matters or in trading real estate.
- Thus the legal professionals carrying out duties of an attorney, which include in addition to duties related to actual legal proceedings, the provision of legal advice concerning a client's legal position in the pre-trial investigation of an offence or other pre-trial handling of the case, and instituting or avoiding proceedings are not subject to the obligation to report.

2 SWEDEN

2.1 Legislation

In Sweden attorney-client privilege has been enacted in Code of Judicial Procedure, Secrecy Act and Act on Measures Against Money Laundering.

2.1.1 Main Rules

Swedish legislation does not have same complications as that of Finland (see 1.1.2 subparagraph 1.), i.e. attorney-client privilege extends over all secrets the client may have communicated to their attorney regardless of the type of mandate.

Thus in Sweden, attorney-client privilege extends over *all* secrets that a client may have entrusted upon their attorney. The Swedish Code of Judicial Procedure 8:4.1 (attorney-client privilege) is worded in exactly the same way as the Code of Judicial Procedure 36:5 which provides the attorney's right not to testify - thus attorney-client privilege does not only extend over court proceedings but covers all confidential communication between an attorney and their client.

2.1.2 Possible exception to the main rules

Guidelines of the Swedish Bar Association on Act on Measures Against Money Laundering affirm that while an attorney is not obliged to disclose information obtained in connection with court proceedings, an attorney may, under certain circumstances which can reasonably be seen to indicate the possibility of money laundering, be obligated to examine their client's transactions and report on their affairs. Such circumstances include the following:

- Difficulties in identifying the client (e.g. sources not easily verifiable)
- Unusual forms of payment (e.g. large amounts of cash)
- Unnecessarily complex transactions
- Transactions which are connected to *Non-Cooperative Countries and Territories* (under the *Financial Action Task Force Against Money Laundering*)

This is a much discussed exception to the main rule in Swedish legislation and its effect to the main rule - at least at the moment - remains open.

3 RUSSIA

3.1 Legislation

The regulation of client-attorney relationships is stipulated by the Federal Law No. 63-FZ of May 31, 2002 "On Solicitor's/Barrister's activity and the Bar in the Russian Federation" (with the Amendments and Additions of October 28, 2003, August 22, December 20, 2004) adopted by the State Duma on April 26, 2002; approved by the Federation Council on May 15, 2002.

3.1.1 Main Rules

- Solicitor's/Barrister's Secrets:
 - Any information relating to the provision of legal assistance by a solicitor/barrister to his/her client shall be deemed a solicitor's/barrister's secret.
 - The solicitor/barrister shall not be summoned and interrogated as a witness about the circumstances that have come to his/her knowledge in connection with his/her being approached and asked for legal assistance or in connection with the provision thereof.
 - The performance of operational investigation actions and investigation actions in respect of a solicitor/barrister (in particular, on the residential and service premises used by him/her to pursue his/her activity of a solicitor/barrister) is permitted only under a court decision. The information, things and documents received as the result of operational investigation or investigation activities (including, after suspension or termination of solicitor/barrister status) may be used as evidence for an accusation only when they are not part of the solicitor's/barrister's proceedings relating to his/her clients' cases. The said restrictions shall not extend to an instrument of crime and also items the circulation of which is prohibited or restricted under Russian law.
- Guarantees of Independence of the Solicitor/Barrister:
 - It is prohibited to ask solicitors/barristers and also the employees of solicitor/barrister formations, chambers of solicitors/barristers or the Federal Chamber of Solicitors/Barristers to provide information relating to the provision of legal assistance in connection with specific cases.