

## ***National law and problems dealing with cross-border aspects of confidentiality of communications between clients and patent advisors.***

The Republic of Bulgaria is a civil law country. In general, patent advisors (lawyers and non-lawyers) are bound by a professional secrecy obligation under statutory provisions and a code of conduct. These provisions are based on the basic constitutional norms on the confidentiality of the communications between any person and his defender and the confidentiality of correspondence and other communications in general.

### **Professional Secrecy Obligation**

#### *Obligations of patent attorneys (lawyers and non-lawyers)*

The Ordinance on the Industrial Property Representatives, adopted by the Council of Ministers, provides that patent representatives (lawyers or non-lawyers) are obliged to perform their duties and protect the interests of their clients in good faith by, *inter alia*, guaranteeing to keep in secret any information disclosed to them when acting as representatives. However, it fails to specify any sanctions for breach of the professional secrecy obligation.

The said ordinance, respectively the provisions on the secrecy obligation, applies to representatives registered as such with the Patent Office of the Republic of Bulgaria. Under the Patent Act only local representatives may represent national and foreign applicants before the Patent Office of the Republic of Bulgarian. Consequently, foreign professional representatives are not recognised as such under the Bulgarian law.

#### *Obligations of legal professionals*

Additionally, all legal professionals are bound by the provisions of a separate statute regulating the attorney profession. They are prohibited from revealing as witnesses any circumstances disclosed to them as attorneys by their clients or by another attorney concerning a client. However, the Code of Conduct of the Attorneys exempts them from such obligation if they have to defend themselves in disputes with their clients.

Pursuant to bilateral agreements or under the terms of reciprocity foreign attorneys may represent persons of their nationality before the Bulgarian judiciary authorities (not administrative). Nationals of EU Member States may also practice their attorney profession. They are deemed equal to Bulgarian attorneys and bound by the same professional confidentiality obligations, when acting before the Bulgarian authorities.

### **Procedural Rules regarding Confidentiality**

#### *Confidentiality in proceedings before administrative authorities*

Under the Code of Administrative Procedure attorneys, priests or any person legally bound to keep professional secret regarding a party to the proceedings may refuse to provide such information. The scope of the notion “any person legally bound to keep professional secret” undoubtedly covers also local patent representatives, who are legally bound by such obligations under the national law. There is no case law as to whether it covers also foreign patent advisors, although the provision could be interpreted in such manner. If so, this exception can be invoked against any order of an administrative authority (including the Patent Office) to provide such information.

### *Confidentiality in judicial proceedings*

The Code of Civil Procedure stipulates that the courts may order third parties to supply documents in their possession upon written request of a party to the proceedings. Where the third party *unduly* fails to do so it can be fined by the court and is liable to any damages caused to the requesting party.

The same code also specifies that any witness may refuse to answer certain questions, if that may result in immediate damages, disgrace or criminal prosecution for him or his relatives. The professional secrecy obligation could be invoked in such cases to justify any refusal to supply a document or testify in civil proceedings, if that may result in immediate damages to a client. These rules could also apply to any patent representatives, whether lawyers or non-lawyers.

In criminal proceedings prevails the public interest of ascertaining the truth. Consequently, a witness may refuse to testify only about facts that have been disclosed to him as a defence attorney. Other persons, including patent advisors (lawyers or non-lawyers), cannot rely on this exception. The Code of Criminal Procedure does not contain specific provisions about possibilities to refuse to supply documents.

### **Conclusion**

What follows from above is that Bulgarian national law contains no specific provisions on the cross-border issues of professional confidentiality obligations. Nevertheless, the various statutory provisions guaranteeing the confidentiality of professional communications in administrative and judicial proceedings are worded openly. It could be argued that they are not limited to persons bound by confidentiality obligations under the Bulgarian national law only and apply to any person bound by such obligations, including foreign patent advisors. To our knowledge, however, there is no case law definitely ruling on their scope in terms of such cross-border issues. The lack of express laws and rules dealing with cross-border aspects of confidentiality brings uncertainty as to whether the courts are bound to accept confidentiality obligations arising under other jurisdictions.