

Behavioral ethics of representatives of the professional legal community of Russia in the information Internet field

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Abstract - The article examines the issue of the limits of freedom of expression of representatives of the professional legal community in public spaces on the example of the case "Sokolov case". The goal is to explore the "spontaneous" regulation of ethical issues of legal practice in modern interactive realities. The task is a study of the specific disciplinary proceedings of one of the regional professional legal community. The authors demonstrate the fact that in a particular case the "eternal questions of the Bar" are doctrinally investigated: the scope of the council's disciplinary authority, the distance between the bar and the state, commercial and charitable in the bar. Conclusions: in the "Sokolov case" the council defended the right to freedom of speech of lawyers in the network, delineating the scope of this right - the lawyer is forbidden to distribute statements containing foul language. At the same time, this case opened Pandora's box, which shattered the whole organization of the professional legal community in Russia.

Keywords — *advocacy, professional ethics, social networks, obscene words, disciplinary proceeding.*

I. INTRODUCTION

On March 31, 2016, the Council of the Bar Chamber of the Samara Region delivered a judgment that became precedential in resolving difficult ethical situations related to the behavior of lawyers on social networks (thereinafter - Sokolov case) [1]. The urgency of the corporate ethical regulation of this issue is obvious and is confirmed by the creation at the Federal Chamber of Lawyers of the Russian Federation in the spring of 2015 a working group to prepare recommendations on the behavior of lawyers in social networks and the blogosphere, which ended with the adoption of the "Rules of conduct for lawyers on the internet" approved by the Council of the FCL of September 28, 2016. One of the authors of this article took part in the work of the commission, which allows you to look at the

problem from the position of the creator of legal instructions of the study area.

Scientific elaboration of the topic is very weak and is located at the junction of several areas of research. The foundation here is the scientific perspective of the relationship between morality and law, presented, for example, in the works of L. Fuller [2]. Bodo B. Schlegelmilch and Philipp Simbrunner in their research have made great strides in studying the moral aspects of the interaction of CFE with their donors in the online spaces [3]. Jessica J. Hoppner and Gautham G. Vadakkepatt conducted their research on the role of the formation of moral authority in the market [4]. Márton Hadarics and Anna Kende [5] wrote about the emergence of any social group with its own morality in public spaces. About impoliteness in the context of morality can be found in the writings of Vahid Parvaresh and Tahmineh Tayebi [6]. The ideas for the existence of moral models in various social groups can find of Benjamin Grant Purzycki, Anne C. Pisor, Coren Apicella, Quentin Atkinson and Dimitris Xygalatas [7]. Quite a lot of research has been devoted to the study of moral discourse in various professional corporations, for example, the Maxine Blackburn and Afroditi Stathi medical corporations [8]. Since the Internet and integrated into it social networks have wide access to them, it is quite logical to use scientific studies on the moral postulates of the media, for example, works by Bradley Wilson [9], when studying moral aspects of behavior in social networks. It is also impossible to miss research of Russell L. Steiger, Christine Reyna directly related to the emotional reactions to the moral and immoral conduct [10]. Studies by J. W. Walters, L. F. Greer, which define "moral status", for example, help to understand the reason, for investing significant resources by professional corporations in regulating the moral behavior of their members on the Internet [11]. The cluster of studies on

moral status can also include works on the moral identity of Johannes Boegershausen, Karl Aquino, Americus Reed [12]. And finally, the works of R. Melnichenko are devoted directly to the legal regulation of the moral behavior of such a legal corporation as the advocacy [13].

II. MATERIALS AND METHODS (MODEL)

Methods that guided the authors in their research: comparative historical method, systematic method, analysis method, and case method.

The purpose of the study is to trace the adaptation process of the well-established corporate morality system when it is implemented in new communication spaces of social networks.

III. RESULTS AND DISCUSSION

The case plot Andrei Sokolov is simple - lawyer Andrei Sokolov reposts of A. Gutin's publication on the Facebook social network. The publication contained information about the roads of the Samara region and was rich in obscene words.

Historical background. Assuming that the problem of the behavior of lawyers in social networks is connected exclusively with the Internet and belongs to the 21st century, it would not be entirely true. This problem is included in the cluster of a broader issue, the question of the rules of public behavior of a lawyer outside the framework of advocacy activity. This cluster of problems, in addition to ethical behavior on the Internet, includes, for example, the behavior of a lawyer in public places (restaurants, casinos, etc.) and the problem of lawyer's interaction with the media.

The first documented collision related to the assessment of the public behavior of a lawyer is related specifically to the media and dates back to sworn attorneys time (1866 - 1917). So, the attorney corporation expressed its position on the issue of public clarification of relations between lawyers through a number of publications in the media. The council of sworn attorneys did not regard such an act as a disciplinary offense. In the case of "20 kopecks for the conduct of the case" [14], when one sworn attorney posted an offensive article against his colleague, the council scrupulously checked the ethical behavior of both the "accuser" attorney and the "accused" attorney. The most "minor" circumstances, except one, were subjected to verification and subsequent evaluation, why the attorney publicly, through the mass media, subjected to derogatory criticism, as it turned out to be unreasonable, to his colleague.

On the other hand, sworn attorneys clearly understood the reputational costs for a corporation, which inevitably arise when a public clarification of the relationship between its members. According to the Moscow Council of Sworn Attorneys, "the accusation by one sworn attorney of another besides the council in the press has that unfavorable effect for the entire class, that society easily summarizes such individual accusations, which decreases respect for the entire corporation" [15]. That is, the sworn attorneys reasonably feared a very common mistake from a not very enlightened public, to automatically extend the property of the part to the whole.

For the first time, legal regulation of lawyer's behavior in public spaces took place in 2010. This was due to problems that had arisen in connection with public criticism of law enforcement bodies by some lawyers. The Council of the Federal Chamber of Lawyers approved the Recommendations on media relations (Minutes No. 5 of June 21, 2010). The key point in the Recommendations was clause 4.1: "Lawyers should refrain from speaking about internal problems of the community in the media, intended for a wide audience. The formulation of such problems is relevant only in corporate and special media".

In the spring of 2015, a working group was set up at the Federal Chamber of Lawyers of the Russian Federation to prepare a draft Recommendation on the behavior of lawyers in social networks and the blogosphere. The work, due to its complexity, is progressing quite hard and is currently at the design stage, however, the materials of the work of the working group, as it turned out, have leaked out and reached administrators of the law. So, in the Sokolov case were used the ideas of the first draft of the recommendations, unfortunately, subsequently modified beyond recognition.

The legal nature of the repost. In order to investigate the Sokolov case, it is necessary to juristically legalize several terms. The following name cluster has spread on the Internet: post, repost and share. A post is the author's text. The post can be divided into two features: originality and authorship. Repost is the distribution of the post indicating the distributor. That is, the repost has two authors - the author of the text and the author of the distribution. A share is a republishing of the message with the addition of text. Compare such phenomena as repost and share. They have two common essential features and repost and share are forms of information dissemination. In social networks, there can be different degrees of distribution, for example, press the "I like" button under the message, this is a low degree of distribution, and if you click the "share" button, this is a strong degree of distribution, since in the second case, more users will see the repost. The author of both share and repost can be denoted by the term "distributor".

The second common essential feature of the repost and the share is the placement of the author's text in its context. But in the vastness of this context lies the difference between repost and share. In the case of a repost, the author, without entering a special context (his text commentary), places the text in the following generally accepted context: "This text should be read" (default context). In the case of share, the distributor adds its own particular context. For example, by pressing the buttons "like", "outrageous", etc., the distributor adds to the text his assessment of the information contained in it. The particular context may be broader, for example, the distributor comments on the post or inserts a link to the post into its text.

Studying the notions of "post", "repost" and "share", one can identify the situation in the Sokolov case as relations arising in the sphere of mass distribution of information, which allows us to use, by analogy Media Legislation.

Eternal questions of advocacy and social networks. While rendering the decision on the Sokolov case, the Council raised a number of key ethical issues of the Russian advocacy. This circumstance testifies to the depth of study of the topic and the Council's responsibility for its decision.

It is very gratifying that the overwhelming number of councils of the bar chambers did not follow the path of the Russian judiciary system at one time and carefully argue their theses. And although you don't always want to accept the positions of the Councils, and it's necessary to agree, because of strong arguments, it's not so easy to dismiss them.

Consider the key issues of the Russian advocacy, manifested in the Sokolov case, using, in particular, reviews of this precedent in the common seal.

The sphere of the disciplinary power of the Council. Since the days of the legal profession, the discussion about whether the requirement of professional ethics applies to a lawyer outside the latter's professional duties does not abate. There are two positions worked out by the sworn attorneys on this issue. A broad approach is based on the fact that a lawyer, wherever he is, whatever he does, must be walked by the rules of professional ethics. The narrow approach is based on the fact that a lawyer is bound by ethical rules only during the execution of his professional duties. During the work of the working group on the preparation of the Rules of Conduct for Lawyers on the Internet, principled discussions took place between representatives of these two approaches.

The Council of the Bar Chamber of the Samara region in its precedent "Sokolov case" demonstrated the possibility of a third approach, which can be called a differentiated approach. Of course, the possibility of such an approach was known to researches involved in advocacy ethics, but the promotion of this approach stopped the fear of the difficulties of its practical application. The differentiated approach is as follows: in the course of a communication act, the author of the text positions himself as a lawyer, which may follow from the text (the author calls himself, for example, "Lawyer Ivan Vasilyevich") or from the context (in his page, the author is labeled "Lawyer Ivan Vasilyevich" or his interlocutors refer to him as a lawyer), in this case, the actions of the lawyer fall under ethical regulation. As we see, this approach seems to be somewhat cumbersome and confusing, but in its decision, the Samara Council of the Bar Chamber applies it with easy convincingness: "A.S. Sokolov on the Internet resource <http://www.facebook.com> registered a personal page where Sokolov A.S. positioning himself as a lawyer, pointing to the practice of lawyers. Internet users perceive Sokolov A.S. as "a well-known Samara lawyer, Andrei Sokolov".

The council produced two proofs that the text under study was created by Sokolov as a lawyer:

1. In the information about himself on his personal page, he denotes his attorney status.
2. In public correspondence on the personal page, the interlocutors of Sokolov call him a lawyer.

The decision of the Samara Bar Chamber can be conceptualized into the following rule: "A lawyer must be guided by law ethics in public spaces if he directly indicates his affiliation to a corporation or if it clearly comes from the context in which the lawyer places his speech".

The distance between the advocacy and the state. The advocacy is objectively connected with the state by a

multitude of bonds, for example, by the institution of appointed councils, a monopoly on the conduct crime, normative regulation of the structure of the advocacy in Russia. At the same time, the advocacy, realizing the threat from the state of its independence, in every way demonstrates its distance from the state and its bodies.

How does the case of Sokolov combine, on the one hand, the satisfaction of the President of the chamber of the requirement of the head of the Justice Department of the Russian Federation to consider the case against the lawyer Sokolov for the fact that he "allows impartial expressions to the public and local authorities", and the duty of the bar to protect the members of its Corporation from the state, on the other hand? These positions are combined as follows: "Condemning, defending".

The key guarantee of the independence of lawyers according to the Basic Principles on the role of lawyers is the following: "Disciplinary measures against lawyers are considered by an impartial disciplinary committee created by lawyers, in an independent body provided by law, or in court and subject to independent judicial control". Taking into their own hands the consideration of this case, the body of attorney self-government thereby protects the lawyer from the possibly biased consideration of this case by the "offended" state body. Condemning the lawyer Sokolov, the Council at the same time deprives the state of the opportunity to pursue a lawyer on political grounds. In its decision, the Council points out: "The mere fact that lawyer A.S. Sokolov takes active citizenship, joining someone else's opinion or expressing his own attitude to current events, actions of the authorities or individuals does not contradict the norms of professional ethics". By punishing a lawyer by noting for obscene words, the Council protected the lawyer from major trouble, political persecution by the state on political grounds.

The decision of the Samara Chamber, in this case, can be conceptualized into the following rule: "A lawyer has the right to criticize public and local authorities".

The commercial and charitable side of the bar as one of the eternal questions of our corporation is also reflected in the decision of the Council of the Bar Chamber of the Samara region. In the Sokolov case, the qualification commission found an unscrupulous method of popularization by a lawyer of her own name for marketing purposes: "The fact of lawyer A. Sokolov, who has the status of a lawyer, was involved in the procedure of public discussion in social networks of the text of a previously unknown author, the main distinguishing feature of which is obscene words, according to the Qualification Commission, aims to attract public attention to the personality of the lawyer A. Sokolov. "Advertising at any cost is not for advocacy. Lawyers should not proceed from the statement that "good deeds cannot be glorified". Here lies the line between permissible and unacceptable advertising in the advocacy.

Freedom of speech and the dignity of the legal profession are key antinomies that identify the Council in the Sokolov case. The Council announces that its goal is to strike a balance between these two values. Consider these two conflicting categories in this context.

Freedom of speech, in our case, is the right of a lawyer to express his opinion online. With all the obvious soundness of this position, it gets his place with great difficulty. The attorney corporation discussed ideas about the need to close public networks for lawyers by creating professional networks. The Council of the Chamber, relying on the idea of a draft recommendation on the behavior of a lawyer on the Internet, repeatedly emphasizes in its precedent not only the possibility but also the usefulness of the advocate of his citizenship publicly.

The dignity of the legal profession. The value of the law firm is self-identification, that is, the presence of its representative features that are not characteristic of representatives of other professions or social groups. The feature of the legal profession is special requirements for the form. The requirement for the external form, for example, manifests itself in the requirement of adherence to the business style in clothing. The verbal form requirement is expressed in tabooing reduced vocabulary and, as its type, obscene words. The Council pointed out: "The expression of opinions on political or social phenomena is a personal opinion, but the form in which this opinion is clothed is not indifferent from the point of view of corporate ethics".

Self-identification of the legal profession is expressed in its exclusivity (features), that is, some actions that from the position of the majority are positive, from the position of the advocacy are unacceptable. That is why public approval of the share of an article with obscene words was no excuse for a lawyer: "The arguments of lawyer A. Sokolov that more than 42,500 users of the social network liked the publication, including lawyers, including more than 11 thousand users shared links to it as the Qualification Commission considered, within the framework of the review of this disciplinary proceeding, they have no legal significance".

Legal reasoning. Two legal arguments can be brought to the thesis that Sokolov's lawyer is subject to disciplinary responsibility.

According to Part 1 of Article 4 of the Code of Legal Ethics of a Lawyer "a lawyer in all circumstances must preserve the honor and dignity inherent in his profession". The disclosure of this document is given above.

Using the method of analogy, in legislation you can find an example of the legal regulation of such a situation. This is legislation governing the functioning of the media. Here we can use not only the Law "About Mass Media", but also a rich doctrinal material. According to Article 57 of the Law of the Russian Federation "About Mass Media", the editors are not responsible for the dissemination of information that does not correspond to reality and discredits honor and dignity if they are literal reproduction of messages and materials or their fragments distributed by other mass media. In the Sokolov case, the lawyer made a repost, which means that he literally reproduced a piece of material distributed by another person. It seems that in this case, the lawyer should not be subject to legal liability. But in article 57 specifies exceptions for this immunity: "(except for the cases of disseminating information specified in the sixth part of Article 4 of this Law)". Turning to part six, we see that these exceptions relate to the dissemination of information concerning minors. It means that immunity in repost or

share is valid in our case. However, we turn to Part 1 of Art. 4 of the Law, according to which the use of mass media for distribution of materials containing obscene words is not allowed.

IV. CONCLUSION

In sum, it is necessary to draw a number of conclusions.

In the Sokolov case, the council defended the right to freedom of speech of lawyers in the network, delineating the scope of this right - a lawyer is prohibited to distribute statements containing obscene words.

The development of the Internet has led to an intensification of both internal corporate and public communication, which, in turn, has increased the risks for actors to be brought to disciplinary responsibility.

Further developments have shown that the application of legal regulation in the sphere of morality, ultimately leads to totalitarian tendencies in the management of the law corporation.

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