

## The Use of the Perso's Miranda Right

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**Annotation:** The article analyzes the legal institution "privilege against self-incrimination", recognized as a fundamental principle of the Anglo-Saxon legal system, the most striking manifestation of which are the so-called "Miranda Rules" formulated in the decision The Supreme Court of the United States in the case "Miranda v. Arizona" (1966), which became revolutionary and textbook for the criminal proceedings of the United States.

**Key words:** suspect, accused, privilege against self-incrimination, right to silence, "Miranda Rules".

### Introduction

This rule, which later became known as the "privilege against self-incrimination", is considered one of the main provisions of Anglo-Saxon evidentiary law. It was established in England at the end of the XIII century, as a reaction to the practice of ecclesiastical courts that existed at that time, which, with the help of an oath "ex officio", obliging persons accused of committing crimes to answer questions put to them without knowing what they were accused of, i.e., actually testify against themselves [1, p. 55; 2, p. 43]. In contrast to this practice, the doctrine of common law took shape, according to which everyone has the right to refuse to testify against himself in a criminal case, which resulted in a rule prescribing to the judge, who asked the defendant to testify, the duty to explain to him that he "is not at all obliged to testify to his own detriment, but that once done their testimony will receive the force of proof and can be used against him" [3, p. 304].

Subsequently, the provision "no one is obliged to testify against himself" was accepted by almost all countries of the Anglo-Saxon legal system and, above all, the United States, where it was elevated to the rank of a constitutional principle. In the United States, the "right of a suspect (accused) to silence" is an integral part of the privilege against self-incrimination, and is enshrined in the Fifth Amendment to

The US Constitution, which states: "No one should be forced to be a witness against himself in a criminal case," accordingly, the accused has the right to refuse to testify. The "right to silence" is a fundamental right of the accused in the United States. The American lawyer W. Burnham writes on this issue: "at least a clause from V Amendments to the U.S. Constitution concerning self-incriminating testimony, in conjunction with the due process clause the legal procedure of the XIV amendment to The Constitutions prohibit involuntary admission of guilt" [6, p. 492].

In the criminal proceedings of the United States, as well as in the criminal proceedings of the United Kingdom, any person testifying in court is a witness, the accused who has agreed to testify also belongs to him, the right not to act as a witness in his own case is commonly called "witness privilege". An ordinary witness has the right to refuse to answer a question during criminal proceedings if the answer to it could lead to his being accused of a crime or would lead to evidence from which it could be concluded that he was involved in a crime. The refusal of the accused to testify in court "should not create any presumption directed against him" [4, pp. 96, 233-234]. A defendant who has agreed to testify in his own case as a witness, unlike an ordinary witness, has no right to evade answering a question that leads him to be convicted of committing a crime (§1621 of the United States Code of Laws)

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The privilege in question is most closely related to the problem of admission of guilt, it applies not only to a person who does not have it has nothing to do with the criminal case, but also with a person involved in it in any way, but who cannot truthfully answer the question without exposing himself to the danger of criminal prosecution.

The US Supreme Court, assessing the "right of the accused to silence" in the decision in the *M. Komm* case (1946), noted: "The privilege against self-incrimination reflects many fundamental values and the noblest aspirations - our unwillingness to subject suspects in a crime to a cruel trilemma: either to give self-incriminating testimony, or perjury, or be punished for contempt of court (for refusing to testify); our preference for the indictment process over the Inquisition; our fear that self-incriminating statements may be they were torn out by inhumane treatment and abuse of power" [7, p. 232].

The U.S. Supreme Court concluded that the criterion of voluntary admission of guilt is not a reliable guarantee against police abuse and police coercion to non-voluntary confessions of guilt. The court ruled that the testimony of the suspect obtained during the interrogation conducted in the conditions of detention of the interrogated person cannot be used against him during the hearing of the case in court, unless the police first create such procedural conditions of interrogation that would ensure that the privilege. The policy of self-incrimination will not be violated. On this basis, the provisions were formulated, which were called the "Miranda Rules".

In the most general form, the "Miranda Rules" are as follows: when a person is detained or otherwise deprived of liberty by the authorities and subjected to interrogation, there is a threat to the right of a citizen against self-incrimination. In order for this right to be protected, procedural guarantees must be applied, which are expressed in the fact that before the start of the interrogation, this person must be warned that:

1. It has the right to remain silent.
2. Anything he says can be used against him in court.
3. He has the right to have his lawyer present and assist him during the interrogation.
4. If he is unable to hire a lawyer, he will be appointed at the expense of the state, when that person so wishes, before the start of the interrogation.

These warnings should be explained in clear and unambiguous terms. Until the prosecutor proves in court that such explanations were made and that the suspect refused to exercise his rights, the evidence obtained as a result of the interrogation cannot be used against him [9, p. 55]. The suspect may waive his right to remain silent, as well as the right to be present Siberian criminal procedure and criminalistic readings. his lawyer during the interrogation, but such refusal must be voluntary.

At any time when the arrested person does not want to answer further questions during the interrogation or decides that he needs the advice of a lawyer, the interrogation must be terminated. If all the necessary warnings have been given, and the person does not object to the interrogation, the police have the legal right to conduct it. Since the appearance of a lawyer in the case, attempts by the police to obtain any information directly from the arrested person or to conduct any investigative actions with him in the absence of a defender are completely prohibited.

The Miranda Rules apply only to persons arrested or otherwise deprived of their liberty by public authorities, and come into force as soon as the face lingers. Arrest without subsequent interrogation or interrogation of a suspect left at large are not grounds for applying the "Miranda Rules".

Many well-known American lawyers support the "Miranda Rules". W.S. White, for example, gave quite solid arguments in their defense, in his opinion, they represent a balance between state and personal interests and make a significant contribution to limiting unacceptable methods of police investigation.



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