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THE ROLE OF ATTORNEY-DEFENDER IN THE CRIMINAL PROCESS: INTERNATIONAL-LEGAL ASPECT

The article studies the issues of legal status and the role of counsel in criminal proceedings because such a right was expressly provided for in the Constitution of Ukraine, on the example of Ukraine and great Britain showing the main points regarding the structure of the legal profession in these countries, the formation of the bar as a separate institution, the analysis of the differences in the formation of this structure in different countries, the proposed changes concerning the activities of the legal profession in Ukraine, taking into account foreign experience.

Keywords: lawyer, counsel, Ukraine, United Kingdom, the advocacy.

A special place in the protection of the rights and freedoms of citizens is an Institute of the defense in criminal proceedings of Ukraine, which aims to protect the rights and freedoms of citizens and also helps to administer justice and enforce laws. The theme of the role of defense counsel in criminal proceedings is always relevant. And Institute protection is of paramount importance. As Ukraine begins to position itself as a legal state, respectively, there has been more growth on the protection of the rights and freedoms of man and citizen, and of course it is logical that the protection given to it in the criminal process. The right of a person to legal aid provided by the Basic Law of Ukraine – Constitution of Ukraine, namely in accordance with Art. 59 of the Constitution of Ukraine everyone has the right to professional legal assistance. In the cases provided by law, this assistance is provided free of charge. Everyone is free to choose the defender of their rights. And because the protection function is provided in the above legal act is one of the main criminal procedural functions, the role of the lawyer is relevant to the discussion.

Problems of activity of the Institute of the defense in the criminal process, designated defenders in society, the professional rights and

responsibilities of the defenders was investigated in the late nineteenth – early XX Century (J. Bentham, I. Foinitsky, A. Horse, N. Janchiv, I. Vaskovskiy). A significant contribution to the development of the problem and had made these scientists processuality as J. Awrah, S. Alpert, N. Barschevsky, A. Boikov, T. Varfolomeeva, D. Whatman, J. Grosheva, J. Kiselev, L. Kokorev, V. Leonenko, V. Lukashevich, V. Medvedchuk, J. Motovilovka, A. Mikhailenko, N. Mikheenko, V. Natruskin, V. Burrows, G. Omelyanenko, I. Gems, I. Petrukhin, N. Polansky, G. Reznik, V. Savitsky, O. Sviatotskyi, M. Gray, J. Stetsivka, M. Strogovich, A. Zipkin, M. Cheltsov, V. Sibeko, A. Shilo, V. Shkarupa, P. Yanovich, A. Yanovskaya, A. Daishi, A. Denning, J. Salmond, H. Stofan and others.

The purpose of this article is to deepen scientific knowledge about the role of the defender in criminal process of Ukraine and the study of the legal aspects associated with his participation in preliminary investigation, identifying the factors that influence their effectiveness.

The main material and justification of the results of the study. Guaranteeing everyone the right to legal assistance is not only the constitutional legal obligation of the state, but also the observance taken by Ukraine international obligations in accordance with the provisions of the universal Declaration of human rights 1948, Convention for the protection of human rights and fundamental freedoms 1950, the International Covenant on civil and political rights, 1966. Under the Law of Ukraine «On advocacy and legal practice» defense – the kind of advocacy, namely, to protect the rights, freedoms and legitimate interests of the suspect, accused, defendant, convict, acquitted person, person in respect of which it is assumed the application of compulsory measures of medical or educational nature, or the question about their use in criminal proceedings, the person against whom the issue of extradition to a foreign state (extradition).

As for the definition of the defender, the lawyer, which protects a suspect, accused, convict, acquitted person, person, relative to which provides for the application of coercive measures of medical or educational nature, or the question about their use, as well as those in respect of which it is expected the consideration of the question of extradition to a foreign state (extradition) [1]. Also worth noting is the fact that the protector cannot be a lawyer, details of which are not included in the

Unified register of advocates of Ukraine or with respect to which in the Unified register of advocates of Ukraine provides information about a stop or termination of the right to practice law, and about the definition of the term «lawyer», according to Art. 1 of the Law of Ukraine «On advocacy and advocate's activity» advocate is a natural person, engaged in advocacy on the grounds and in the manner provided by the said law. Also, the law provided that the right to engage in advocacy can be a natural person who has full higher legal education, fluent in the state language, has experience in the field of law for at least two years, pass a qualifying exam, passed training, was the oath of attorney of Ukraine and obtained the certificate of right to advocacy. Can't be a lawyer a person who: has outstanding or unwithdrawn in the manner prescribed by law a criminal record for committing serious, very serious crimes and crimes of medium gravity, for which sentenced to imprisonment [2].

If you compare the role of counsel in Ukraine with the attorney, for example, in the UK, the country of Albion very much attention devoted to the legal profession. There the legal status of the legal profession in the UK is regulated by several legal sources of different nature. The legal profession in the UK has evolved over the centuries and now operates on the basis of Royal charters, private parliamentary acts, government regulations, rules adopted by the governing bodies of the bar associations, judicial decisions, legal traditions and legal traditions [3]. These include, in particular, include Royal Charter (1845, 1872, 1903, 1909 and 1954), as well as a series of acts of Parliament specifically devoted to lawyers in the field of criminal law and justice in criminal cases. In criminal procedure the sources of broadly defined that the lawyer-defender in the UK has an important role. In matters of the right of counsel lawyers are guided by the following three legislative acts: the police Act and criminal procedure, evidence, 1984, the criminal justice Act 1994, the Law on criminal procedure and investigations 1996.

A distinctive feature of the English legal profession is a historically-developed division of practicing lawyers into two groups – solicitors (solicitor) and barristers. These subjects have the right to perform the function of protection in criminal proceedings. Solitary have limited the right to public speaking in the courts, they mostly meet with clients, suspects or the accused, acting on their behalf, help to gather evidence in their favor. Yet until recently, salt – citori had the right to take part only in the Bulletin of the Academy of

advocacy of Ukraine 140 the number 2 (24) 2012. the lower courts (Magistrate's Courts, County Courts) or aplac to the Supreme court, provided, however, that they were in fact in the lower court. The first changes on the right solcitors to act as counsel in higher courts took place in 1990, with the adoption of the Act on judicial and legal services (Courts and Legal Services Act). For this act, solitary was entitled to receive a certificate of defense counsel. Entitled to receive such certificate had only solitary those who have already had the practice of counsel in the lower courts, they had only to pass a short training and pass the exam on knowledge of Rules of evidence (Rules of evidence). The act on the access to justice (Access to Justice Act), enacted in 1999, allows all solcitors have the right to step into the role of advocate in the higher courts, but the new rules for learning such solcitors still not ready.

As for barristers, they are the advocates entitled to practice in all the courts of all instances, their work is supervised by the General Council of the bar Association (General Council of the Bar). All barristers must be members of one of the four associations (Inns of Court) [4].

Functions of lawyers in the UK compared to the functions of lawyers in continental Europe is much wider: the lawyer may be not only functions of protection or representation of interests of citizens in courts, but also as a criminal Prosecutor on behalf of the state and individuals. one of them is that lawyers can be appointed to positions of judges, Ministers and other officials in the government, to engage in teaching in universities, to combine function attorney with the practice of a notary, can take powers being in high positions and remain members of the bar of the corporations.

In addition, it is worth noting that the actions of lawyers in criminal cases are divided into so-called preliminary legal advice and direct participation in production for defense. Therefore, we can conclude that the role of the lawyer in these cases is very high, as, taking part in criminal proceedings, they performed one of the most important functions of the state – protection of legitimate rights and freedoms of the individual, namely: helping the detainee, suspect, accused, defendant and convicted in the protection of their legal interests, provides them with qualified legal assistance, counteracting the falsification of evidence, the use of illegal methods of investigation, neutralizing accusatory pre-trial investigation etc.

Consequently, the lawyer-defender in the UK is the lead professional, and comparing its functions with the functions of the

lawyer in Ukraine, it can be concluded that the British had provided a wider range of powers in the activities of the lawyer than it does to us. Of course there are a number of reasons, as the Anglo-Saxon legal system, which belongs to the Kingdom, involves an adversarial process in which the defense and prosecution have equal positions before the court, in contrast to the model of the Romano-Germanic legal family, which includes Ukraine, where a competitive process is only beginning to emerge, although, unfortunately, remains and still laid in Soviet times, the functional imbalance dominates accusatory, significantly limited the protective procedural safeguards.

Regarding Ukraine, it is a progressive step towards ensuring the right to defense in criminal cases is the adoption of the law of Ukraine «On free legal assistance» (2 June 2011). In accordance with this Law guaranteed by the state and fully or partially free legal assistance at the expense of the State budget of Ukraine, local budgets and other sources [5].

The law contains provisions on granting free primary legal aid, which includes certain types of legal services: providing legal information, consultations and explanations on legal issues, drafting applications, complaints and other legal documents (except documents of procedural content) providing assistance in ensuring a person's access to secondary legal aid of the form of state guarantees, which is to create equal opportunities for the access of persons to justice.

Returning to a defense attorney in the UK it is worth noting that the Legislation of foreign States decides this question in different ways. In great Britain the income of the entity determined without regard to the income of other family members. Persons with low income receive full legal assistance in the preparation of the proceedings and during the hearing. Practiced partial grant aid for a certain group of the poor. Perform these tasks on behalf of the government engaged in law society (Law Society). The presence of a low-income person who applies for legal aid is determined by the Commission of additional appropriations for the Ministry of social welfare.

The territorial committees (for the convenience of the system of grant aid in England and Wales is divided into 12 districts, each of which has territorial Committee) composed of practicing barristers and solicitors and their subordinate numerous local committees with the relevant law specialists consider the application for granting permission for legal assistance in courts of first instance and, accordingly, are given a certificate. The functions of territorial

committees also includes the supervision of solicitors, their remuneration, approval of the lists solicitors and barristers, which provide free legal advice and conduct cases by appointment. Free legal aid in England and Wales were guaranteed in the 1949 Act and legal aid Board (Legal Aid and Advice Act) [6]. Until that time, the issue of providing legal aid to poor was regulated by various regulations. In particular, the first state aid for criminal cases was established in 1903.

Consequently, reliable protection of human rights is the Supreme criterion for assessing the activities of all the institutions of the state, constitute a system of law enforcement and human rights bodies. By ratifying the European Convention for the protection of human rights and fundamental freedoms (1950), Ukraine has committed itself to ensure that everyone whose rights have been violated, effective remedies (Art. 13). The level of development of the legal profession is one of the indicators of democratic society, one of the signs of protection of human rights. Consequently, reliable protection of human rights is the Supreme criterion for assessing the activities of all the institutions of the state, constitute a system of law enforcement and human rights bodies. By ratifying the European Convention for the protection of human rights and fundamental freedoms (1950), Ukraine has committed itself to ensure that everyone whose rights have been violated, effective remedies (Art. 13). The level of development of the legal profession is one of the indicators of democratic society, one of the signs of protection of human rights. And therefore, based on the practice of foreign colleagues, the advocacy of Ukraine is to suffer certain reforms, in particular in view of collecting evidence against his client and development of the so-called «law of investigation» UK has long developed a competitive model of management process, when in Ukraine, this direction is in its infancy. Additionally, the division of advocates into 2 categories has a right to exist in our state, after all, so those of the defender, who don't have enough experience preparing documents and all matters related to pre-trial investigation, and the other half lawyers act in court. A certain parallel in this case, it is possible with the assistant to the lawyer, but all the same, the helper executes all the instructions of a lawyer at all stages of the process and included in the whole process to the end. Regarding free legal assistance, you should take into account the fact that in this sphere it is necessary to allocate more financial costs for development of this direction, which will allow public defenders to do their job much better.

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Роль адвоката-защитника в криминальном процессе: международно-правовой аспект

Досліджено питання щодо правового статусу та ролі захисника в кримінальному процесі на прикладі України та Великої Британії. Визначено головні елементи структури адвокатури у вищезазначених країнах. Окреслено етапи формування адвокатури як окремого інституту. Здійснено аналіз щодо відмінностей у формуванні цієї структури в Україні та Великій Британії.

Ключові слова: адвокат, захисник, Україна, Велика Британія, адвокатура.