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INTERNATIONAL ADVOCATORY

Summary. The article is devoted to the problem of advocate's legal status in foreign countries. The most meaningful regulations of international legal acts, that govern advocate's activity are under study. The bases of national legislation of the leading states that regulate activity of advocate are considered. Special attention is paid to the world advocates' associations which present and protect interests of their members.

Keywords: international legal act, guarantees, activity of advocate, community, position, regulation.

Problem formulation. Lately in Ukraine there has been changing of views and attitude toward public and state values: the ideas of European humanism are introduced and international standards are taken into account. Rethinking the role and meaningfulness of an individual, protection of his natural rights and their fixation in international legal acts began after the Second World War. Our state developed these norms and began to introduce them into national legislation.

An institute of defence of human and citizen rights does not at standstill. It's dynamically changed not only inside the state. In a real period the questions of advocacy outside the state become vital, because appeared the possibility to present the Ukrainian citizens in international instances. Thus, for example, after ratification of Convention on Human Rights, the citizens of Ukraine and legal entities got right to appeal in the European court on human rights. For this purpose lawyers (defenders) must follow international

legal norms and standards. Thus, the concept of international advocacy has appeared, under which suggest to understand independent professional activity of advocate concerning realization of defence, representation and providing of other types of legal aid to a client in international organizations and instances, and also courts of other states in private and public legal issues. On the basis of this definition it is possible to define elements, which the international advocacy includes.

But also in the practice advocates need regulation, observance of guarantees and defence of own rights. It became possible after acceptance of such international legal acts, as: A general code of rules for the advocates of EU countries, Regulation of International Union (Commonwealth) of advocates, Declaration of UNO on a right and duty of separate persons, groups and organs of society to encourage and protect confessedly human rights and basic freedoms, Basic Principles on the Role of Lawyers accepted by Eighth Congress of UNO, et al.

Moreover, advocate's associations were created for strengthening of cooperation, extension of connections, defence of rights, freedoms, honour and dignity, for support of independence of judicial authority and right of advocate to do their profession without interference. We suggest to pay special attention to the analysis of activity of International Bar Association (IBA) and International Union (Commonwealth) of advocates.

Also during realization of their profession within the framework of legislation of other countries, an advocate must follow the legal acts of this state, taking into account that each of them has a different level of admittance of foreign advocates to realization of their profession.

International legal organizations and advocatory communities

There is a set of methods of protection of the rights of lawyers: by collection of information, exchange of experience and the direct appeal to the relevant instances. All this becomes possible and available when representatives of a legal profession create the professional organizations.

Basic Principles on the Role of Lawyers regulate the right of defenders to create associations and organizations. In particular, they have to have the right to take part in public discussions according to issues of law, administrations of justice, providing and protection of human rights and the right to join or create the local, national and international organizations and to visit their meetings without threat of restriction of professional activity because of their lawful actions or membership in the organization allowed by the law. Lawyers always have to be guided by the law and recognized

professional standards and ethical rules by implementation of these rights.

According to article 24 of Basic Principles on the Role of Lawyers the right to form self-governed associations for representation of their interests, continuous study and retraining and maintenance of their professional level has to be granted to lawyers. Executive bodies of professional associations are elected by their members and carry out the functions without external interference [2].

The recommendation No. Rec (2000)21 on the freedom of exercise of the profession of lawyer accepted by Committee of ministers of the Council of Europe on October 25, 2000 also contains norms on the right of lawyers for creation of associations. Namely, the Principle V regulates that lawyers have to have the right for creation and the accession to the professional local, national and international unions and associations which have the purpose increase of professional standards and protection of independence and interests of lawyers as individually, and through the organizations. Moreover, associations of advocates or other professional associations of lawyers have to be the self-governed organizations, that independent of authorities and the public [3].

Fixing of these rights gave the chance of free and legal activity of a multitude of advocatory communities. Our attention was drawn by some of them, whose activity we suggest to consider.

The leading world organization — the International Bar Association (IBA) — accommodates the international specialists-lawyers, associations of lawyers and legal societies. IBA was created in 1947 for the purpose to support the establishment of the law

and administration of justice around the world. Representatives of 34 national associations of lawyers met in New York on February 17, 1947 for its creation. There are more than 50.000 private lawyers and more than 190 lawyer associations in its membership.

The basic aims of IBA are to support of independence of judicial authority and the right of lawyers for doing their profession without interference and also support of human rights for lawyers around the world through institute of human rights [8].

The interests of the member organizations of IBA is protected by the Lawyer commission on questions of legal character (BIC) which includes round tables, preparation and seminars to discuss problems which mention the lawyer's profession all over the world; the working groups which develop resources and recommendations for associations of lawyers and strategic Committee which informs Meetings of IBA about the key resolutions of IBA and statements.

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Another part of IBA is Legal Projects Team (LPT) that is a policy centre which works to create strategies and initiatives aimed at addressing some of the most pressing concerns faced by the global legal profession.

The International Union (Commonwealth) of lawyers (MSA) was created with the purpose of strengthening of cooperation, solidarity and mutual aid of lawyers and lawyer public organizations of the CIS countries and other states. The tasks this organization are assistance to exchange of experience of work of lawyers of the different countries and protection of the rights and freedoms, honor and dignity of members of the organization.

The international Union (Commonwealth) of lawyers was grounded in 1992 as a result of reorganization of the Union of lawyers of the USSR with assistance of lawyers of nine states — the former federal republics.

Lawyers of any state and unions, and other public associations of lawyers which recognize its Charter and voluntary showed willingness to enter MSA can be members of the Union. Scientists, lawyers, public figures and legal entities, the public associations which are actively promoting realization of the purposes and tasks of the Union can be admitted in it [9].

Generally activity of the Union consists in the organization of the international conferences and meetings for studying and distribution of experience of the leading lawyers of the world.

Guarantees of professional activity of lawyers

Many international legal acts contain guarantees of the person (the defendant or the detainee) on protection. In this case the person is obliged not only to inform the government on the present possibility, but also to promote its implementation. But where guarantees of activity of lawyers are regulated? And what provisions are contained there?

Basic Principles on the Role of Lawyers contain the whole section devoted to these issues. Safety of lawyers if they are under the threat in connection with execution of professional duties is guaranteed. In that case lawyers have to be adequately protected by the authorities.

Also that situation on the basis of which lawyers shouldn't be identified with their clients and causes of clients in connection with execution of their professional duties is interesting.

Moreover there is the warranty about prevention of refusal by court or administrative body in recognition of the right of the lawyer having the admission to practice to represent interests of the client if this lawyer wasn't disqualified according to the national right and practice of its application and Basic Principles.

There is also it is a question in the act that the advocate has to possess criminal and civil immunity from prosecutions for the relevant statements made in a written or oral form at fair execution of the duty and implementation of professional duties in court, tribunal or other legal or administrative body.

Article 21 of Basic Principles says that an obligation of the competent authorities is providing to the lawyer of possibility of opportune acquaintance with information, documents and case papers, and in criminal trial — no later than the end of investigation before pre-judicial consideration.

Also final, but not less important guarantee is that the governments have to recognize and observe confidentiality of communications and consultations between the lawyer and the client within their relations connected with exercising by the lawyer of the professional duties [2].

According to the Principle I of The recommendation No. Rec (2000)21 on

the freedom of exercise of the profession of lawyer, lawyers have to possess a freedom of worship, words, movement, meetings and associations in the unions, and also, in particular, have to have the right to take part in public discussions on matters of law and administrations of justice and to propose legislative reforms. Also it is said that lawyers shouldn't suffer from consequences or be endangered any sanctions or to pressure when they act according to the professional standards [3].

*The legal acts, that regulate
advocatory in the legislation
of China, Germany, France
and the USA*

Activity of defenders, their possible and proper behavior, guarantees of their safety is regulated not only at the international level, but also in each certain country. We will consider what legal acts regulate a lawyer profession in the certain countries. For our research we took the most developed and significant countries on the world scene.

In the Federal Republic Germany the main act that regulates advocatory is the Federal provision on legal profession (BRAO). According to this provision only that person, who received qualification that allows to hold the judge's position according to the German law on judges can be allowed to advocatory profession or that person who responds conditions of legal profession according to the Law on activity of the European lawyers in Germany of March 9, 2000, or [4].

Lawyers in Germany use as the standard basis of their activity the Provision on a profession (BORA), the Law on lawyer's fee (RVG), Labour rules of the European Community and the Law on activity of the European

lawyers in Germany (EuRAG). The last says that those who was included in chamber of lawyers, working under the contract, in the country of the citizenship as the European lawyer, has the right to carry out lawyer activity in the territory of Germany [5].

In the Chinese People's Republic advocatory is regulated by the Temporary provision on lawyers of Chinese People's Republic of 1980, also the Law of Chinese People's Republic on legal profession which defines the lawyer as the person who renders legal services to principals, having obtained the license for advocatory in the order established by the legislation and after acceptance of an assignment or allotment [6].

The main statutory act, that regulates activities for rendering legal services is the Law of Chinese People's Republic on lawyers and legal practice which consists of eight sections devoted to conditions of implementation by lawyers of practice, law firms, the rights and duties of the practicing lawyers of responsibility of lawyers and so forth [7] For obtaining the certificate on the right of implementation of legal practice the citizen of the Chinese People's Republic has to have qualification of the lawyer (lawyer), i.e. pass the National legal examination which is carried out by the Ministry of Justice, have a year of probation in law firm and to be the respectable person [11, p. 63].

The lawyer, according to laws of the People's Republic of China, has to protect legitimate interests of principals, support the correct application of laws and protect social equality and justice.

Art. 39 of the Law also establishes that the lawyer has to enter into the existing local association of lawyers and at the same time be the member of All-China association of lawyers.

In that case according to the charter of association the rights if it carries out authorized duties are guaranteed to him [13].

Passing on to legal profession in France it is possible to say that the last twenty years she endures essential changes. Under the law of December 31, 1971 there was a merge of a number of lawyer professions (the lawyer, the attorney and the consultant expert in commercial courts) in a one profession of an advocate. Also there was a merge of the lawyer and legal adviser in a new and united advocate profession in 1992.

It should be noted that in France the term "advocate" designates not a rank, but a type of professional activity of the practicing person. Therefore any person having qualification of an advocate, but who stopped working in legal profession even if it continues to work in other spheres of the right, can't be called as an advocate any more [10, p. 147].

From the date of adoption of law of December 31, 1971 No. 71-113020 concerning reform of some judicial and legal professions to its text made numerous changes and additions. One of the reforms which are carried out on the basis of the Law of December 31, 1971 No. 71-1130 was introduction of the united name of a profession — the advocate- instead of other names which had persons, who were carrying out professional activity on rendering legal aid. In the Law of December 31, 1971 No. 71-1130 is emphasized that the profession of the lawyer is free and independent profession [12, p. 294].

In the USA there is no legal act which would affirm the rights of the lawyer in legal proceedings. The status of the defender follows from custom, a case law, norms of professional ethics.

The fundamental condition of participation of the lawyer in legal proceedings is stated in the amendment VI (1791) to United States Constitution: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense” [1].

By-turn, this amendment was developed in a number of conclusions of the courts (1963, business “Gideon against Wentrayt”; 1966, business “Miranda against the State of Arizona”; 1977, business “Brewer against Williams”, etc.). The essence of these conclusions are reduced to the following principles: the right for the lawyer is fundamental and necessary for a fair trial, thus everyone to whom punishment in the form of imprisonment can be imposed has the right for the

lawyer; the lawyer has to participate in those procedural actions where he can give accused “help to cope with legal problems, or to give advice when it is resisted by other procedural party” [10, p. 178].

Conclusions. Thus, it is possible to draw a conclusion that there are legal acts regulating certain features of advocacy in every developed state. And it is important not only for the defenders practicing in the international field to know them, but also for the lawyers, who seek to improve national legislation.

The regulation and observance of the principles of lawyer’s activity becomes possible because of provisions which are fixed in international legal acts and comprise the most important norms. For example, opportunity to fulfill all the professional duties without intimidation, obstacles, annoyance and inappropriate intervention, fixed in Basic Principles on the Role of Lawyers.

Also the international associations of lawyers were created and continue to function for protection of the rights of lawyers, exchange of experience, achievement of the general tasks and extension of professionalism.

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Колкутина М.

Международная деятельность адвоката.

Аннотация. Статья посвящена исследованию правового статуса адвоката в зарубежных странах. Также изучены наиболее значимые положения международных нормативно-правовых актов, регламентирующих адвокатскую деятельность. Более того, рассмотрены основы национального законодательства ведущих государств, регулирующие деятельность адвоката. Уделяется внимание и мировым адвокатским объединениям, которые представляют и защищают интересы своих членов.

Ключевые слова: международный нормативно-правовой акт, гарантии, деятельность адвоката, сообщество, положение, регулирование.

Колкутіна М.

Міжнародна діяльність адвоката.

Анотація. Стаття присвячена дослідженню правового статусу адвоката в зарубіжних країнах. Також вивчені найбільш важливі положення міжнародних нормативно-правових актів, що регламентують адвокатську діяльність. Більш того, розглянуті основи національного законодавства провідних держав, які регулюють діяльність адвоката. Приділяється увага і світовим адвокатським об'єднанням, що представляють та захищають інтереси своїх членів.

Ключові слова: міжнародний нормативно-правовий акт, гарантії, діяльність адвоката, товариство, положення, регулювання.

