ПОЛІТИКА ПРАВ ЛЮДИНИ: ДОКТРИНАЛЬНІ ЗАСАДИ, ПРАВОВЕ РЕГУЛЮВАННЯ І ПРАКТИКА ЗДІЙСНЕННЯ
HUMAN RIGHTS POLICY: DOCTRINE PRINCIPLES, LEGAL REGULATION AND IMPLEMENTATION PRACTICE

DOCTRINE, CONSTITUTIONAL PRINCIPLES AND THEIR IMPACT ON THE DEVELOPMENT OF LEGISLATION ON THE ADVOCACY OF UKRAINE
ДОКТРИНА, КОНСТИТУЦІЙНІ ПРИНЦИПИ ТА ЇХ ВПЛИВ НА РОЗВИТОК ЗАКОНОДАВСТВА ПРО АДВОКАТУРУ В УКРАЇНІ

UDC 347.93.004.77
DOI https://doi.org/10.32782/ehrlichsjournal-2020-4.04

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The principles of the organization and activity of the bar and the implementation of the bar in Ukraine are determined by law. The right to professional legal assistance is a constitutional right for every person and is enshrined in Article 59 of the Constitution of Ukraine. The institution of legal aid of a lawyer is important for every citizen, because having established the right of any natural person to legal aid, the constitutional precept "everyone is free to choose a defender of his rights" is general in its meaning and applies to all natural persons who are guaranteed the right to free choice the defender in order to protect his rights and legal interests arising from civil, criminal, labor, family, administrative and other legal relations.

Qualified legal assistance is precisely the provision of advocacy activities that are legal, that is, aimed at achieving a specific legal result based on certain legal means. The analysis of the legal positions of the Constitutional Court of Ukraine allows us to assert that the Constitutional Court of Ukraine formed

the official constitutional doctrine of advocacy. In our opinion, the systematic updating of the legislation in connection with the integration of Ukraine into the European Union allows us to raise the question of improving access to the legal profession precisely on such grounds.

A characteristic feature of Ukraine is the orientation towards European standards of advocacy. The study of legal aspects of access to the profession of a lawyer is inextricably linked to the activation of the processes of reforming the legal profession, the need to raise the level of not only professional requirements, but also to maintain a balance between the provision of fundamental human and citizen rights and the creation of a new elite whose task will be to provide quality legal assistance.

Standardization of advocacy activities, first of all, should be of interest to the advocates themselves. It will be attractive to lawyers because it will encourage them to constantly raise their professional level, develop, and share their experience thanks to a clearly prescribed mechanism for exchanging information, taking into account the ethical and professional characteristics of advocacy. The standardization of advocacy activities is in no way intended to limit the professional activity of advocates, to establish any framework for them. On the contrary, the standards of the bar can and should relate to, and subsequently have a positive effect on, the moral image of each lawyer, in particular, and the bar as a whole.

***Key words*:** advocacy, Bar, constitutional principles, doctrine, European standards, right to defense, lawyers.

The right to professional legal aid is a constitutional right for every person and is enshrined in Article 59 of the Constitution of Ukraine. The institute of legal aid of an attorney is important for every citizen, because by enshrining the right of any individual to legal aid, the constitutional provision "everyone is free to choose a defender of his or her rights" is general in nature and applies to all individuals who are guaranteed the right to freely choose a defender in order to protect their rights and legitimate interests arising from civil, criminal, labor, family, administrative and other legal relations.

The importance and special social significance of the right to legal aid also lies in the fact that it acts as a kind of intermediary in the exercise of other rights. In some cases, it is difficult for a person to fully exercise the rights guaranteed by the Constitution without using the right to legal aid, since the procedural legislation of Ukraine is quite formalized [7].

It is worth noting that the Law of Ukraine "On the Bar and Practice of Law" [8] and the Law of Ukraine "On Free Legal Aid" [9] do not use the term "professional legal aid", instead using the term "legal assistance". The relevant law amending the Constitution of Ukraine did not provide for amendments to the special legislation aimed at regulating the practice of law [10]. This necessitates establishing the reasons that guided the legislator in amending the Constitution of Ukraine in terms of terminological substitution. As stated in the Explanatory Note to the Draft Law [11]: "In order to significantly improve the quality of representation of a person in court, as well as to establish a constitutional basis for the creation of a single legal profession, it is envisaged that only an attorney will represent another person in court… This is consistent with the constitutional guarantee of the state, which – with the appropriate clarification (in Article 59 of the Constitution of Ukraine) – emphasizes that everyone has the right to professional legal aid… [5] Thus, the state guarantees, that the assistance will be provided by a lawyer who has the necessary level of professional training, is bound by the rules of professional ethics, legal requirements for access to the profession and will be responsible for improper performance of his/her professional duties".

Such a terminological substitution is determined by the standards of the Ukrainian language, which disclose that the adjective used to denote the relevant type of assistance comes from the noun denoting the profession of the person providing such assistance. The noun for a person providing legal services is the word "lawyer". Thus, it is persons belonging to the legal profession who provide professional legal aid. In addition, the terms juridical – legal – legal – juridical are generic synonyms [2].

The Glossary "Human Rights Lawyers at Risk" distinguishes between the concepts of legal aid and legal aid in connection with human rights violations. Thus, "legal aid (legal assistance) is a generic term used in relation to various types of legal services provided by lawyers (attorneys). Among the types of such assistance are consultations and explanations on legal issues; preparation of applications, complaints and other legal documents; representation of clients' interests in courts, in state bodies, other organizations, including their governing bodies, and before individuals; participation in pre-trial proceedings and court in criminal cases as a defense counsel, as well as a representative of victims, civil plaintiffs, civil defendants, etc. In some countries, lawyers and attorneys have different powers with regard to the types of legal aid". Whereas "legal aid in

connection with human rights violations is a new concept that means obtaining and providing qualified legal aid or other relevant advice and assistance in the protection of human rights and fundamental freedoms". The Constitution of Ukraine uses the term professional legal aid in Article 59. The Law of Ukraine "On the Bar and Practice of Law" defines the practice of law as "independent professional activity of an attorney-at-law in the field of defense, representation and provision of other types of legal aid to a client" (Article 1 (1)(2)). It should be noted that the term "legal aid" is used primarily in international law to refer to relations of cooperation between states in the legal sphere. It is also possible to consider legal aid in a broad sense as a concept that includes the entirety of means and methods aimed at ensuring and protecting subjective rights, and legal aid as a special type of procedural activity regulated by law and carried out through legal (juridical) means. However, based on the analysis of the provisions of Article 59 of the Constitution of Ukraine, an attorney-at-law is the only unique entity that provides professional legal aid. This seems to be a rather radical position. In this regard, it should be noted that the state guarantees free legal aid, not legal aid in the form of "provision of legal services aimed at ensuring the realization of human and civil rights and freedoms, protection of these rights and freedoms, and their restoration in case of violation" (clause 3 of part 1 of Article 1 of the Law of Ukraine "On Free Legal Aid"). At the same time, according to Article 9 of the Law of Ukraine "On Free Legal Aid", the subjects of primary legal aid provision are "executive authorities, local self-government bodies, individuals and legal entities of private law, specialized institutions, centers for the provision of free secondary legal aid". The term "legal aid" should retain the understanding inherent in international law, and the phrase "qualified legal aid" contained in Article 69 of the Constitution of Ukraine should be used to explain the type of legal aid. At the same time, it should be noted that in recent years there has been a tendency to provide legal aid by non-lawyers, "paralegals". The American Bar Association defines a paralegal as "a person who is qualified by education, training, or work experience and who is employed by a lawyer, law firm, corporation, government agency, or other organization and performs specially assigned legal work for which the lawyer is responsible". These initiatives are welcomed in countries where there is a small number of lawyers, and professional lawyers primarily act as defense counsel in criminal proceedings. Currently, the idea of "paralegals" has not been implemented in Ukraine.

Consequently, qualified legal aid is the provision of legal services, which is legal, that is, aimed at achieving a specific legal result on the basis of certain legal means.

The analysis of the legal positions of the Constitutional Court of Ukraine allows us to assert that the Constitutional Court of Ukraine has formed an official constitutional doctrine of the Advocacy.

Therefore, according to the Decision of the Constitutional Court of Ukraine in the case on the constitutional appeal of citizen Soldatov Gennadiy Ivanovich regarding the official interpretation of the provisions of Article 59 of the Constitution of Ukraine, Article 44 of the Criminal Procedure Code of Ukraine, Articles 268, 271 of the Code of Administrative Offenses of Ukraine (case on the right to free choice of defense counsel) of November 16, 2000 № 13-rp/2000, "The right to legal aid is the opportunity of an individual to receive legal (legal) services guaranteed by the Constitution of Ukraine" [15].

In another Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of citizen Golovan Ihor Volodymyrovych regarding the official interpretation of the provisions of Article 59 of the Constitution of Ukraine (case on the right to legal aid) of September 30, 2009, No. 23-rp/2009, "An important role in ensuring the realization, protection and defense of human and civil rights and freedoms in Ukraine as a democratic, law-based state is assigned to the right to legal aid enshrined in Article 59 of the Constitution of Ukraine. This right is one of the constitutional, inalienable human rights and is of a general nature. In the context of part one of this Article, "everyone has the right to legal aid", the term "everyone" covers all persons without exception – citizens of Ukraine, foreigners and stateless persons who are on the territory of Ukraine. The exercise of the right to legal aid is based on the principles of equality of all before the law and non-discrimination on the grounds of race, skin color, political, religious and other beliefs, social origin, property status, place of residence, language or other grounds (Article 21, parts one and two of Article 24 of the Basic Law of Ukraine).

The constitutional right of everyone to legal aid is inherently a guarantee of the realization, protection and defense of other human and civil rights and freedoms, and this is its social significance. Among the functions of such a right in society, one should separately highlight the preventive one, which not only facilitates the legitimate exercise of rights and freedoms by a person, but also, above all, is aimed at preventing possible

violations or unlawful restrictions of human and civil rights and freedoms by public authorities, local self-government bodies, their officials and employees" [16].

In a separate opinion of the judge of the Constitutional Court of Ukraine V.V. Gorodovenko regarding the Conclusion of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Verkhovna Rada of Ukraine on the provision of an opinion on the conformity of the bill on amendments to the Constitution of Ukraine (regarding the abolition of the attorneys' monopoly) (Reg. No. 1013) with the requirements of Articles 157 and 158 of the Constitution of Ukraine, "The independent and professional activity of an attorney is supported by a number of state guarantees of the practice of law (in particular, the mechanisms of access to the profession of attorneys' for the purpose of effective protection of human and civil rights and freedoms). This makes it possible for the advocacy to provide timely, accessible, high-quality and highly qualified legal aid in order to ensure effective protection and restoration of human and civil rights and freedoms. In this sense, the provision of professional legal aid by an attorney, including representation of a person in court, is one of the key instruments for the realization of the constitutional right to professional legal aid guaranteed by Article 59 of the Constitution of Ukraine.

At the same time, the Bar in the national legal system is recognized as an important element of the mechanism for ensuring the right to a fair trial, as evidenced by the definition of its constitutional and legal status in Chapter VIII "Justice" of the Constitution of Ukraine. Just like judges and prosecutors, an independent professional lawyer is an important procedural figure in the judicial process – through the provision of professional legal assistance, a form of which is representation of a person in court, he or she contributes to the implementation of independent and high-quality judicial proceedings, the proper implementation of its principles, effective court decisions, and thus to ensuring the right to a fair trial" [6].

As noted by Judge of the Constitutional Court of Ukraine V. Horodovenko, Articles 55 and 59 of the Constitution of Ukraine do not limit the state in determining the means of ensuring the rights of everyone to judicial protection and professional legal assistance. Within the meaning of Article 59 of the Fundamental Law of Ukraine, the constitutional right to professional legal aid is not limited to the only possible means of its realization in the form of providing such aid exclusively by an attorney-at-law and does not exclude other effective means of exercising this right, including the provision of legal aid by other persons who have the necessary level of legal knowledge and practical skills in the field of law. The main thing is that such means should facilitate the realization of the constitutional rights to judicial defense and to professional legal aid and not lead to a narrowing of their content and scope or the abolition of these rights.

However, the state's discretion in ensuring the constitutional rights of everyone to judicial protection and professional legal assistance is not unlimited, and the means used by it should contribute to the effective realization of these rights and the proper level of justice.

In this regard, it should be noted that in § 26 of the judgment of the European Court of Human Rights in the case of "Airey v. Ireland" [13] of October 9, 1979, along with the indication of the state's discretion in regulating the right to a fair trial, it is noted that Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 may in some cases oblige the state to provide legal assistance if without such assistance it is impossible to ensure the practical realization of the right to a trial, if legal representation is provided on a mandatory basis, as provided for by the domestic law of some Contracting Parties in respect of various The European Court of Human Rights in § 26 of the judgment in the case of "Moldavska v. Ukraine" [14] of May 14, 2019 noted that the requirement that the appellant be represented by a qualified lawyer before the court of cassation, such as the requirement applied in the present case, cannot be considered contrary to Article 6 of the Convention, this requirement is clearly compatible with the peculiarities of the status of the Supreme Court as the highest court of appeal, and this is a common feature of legal systems in a number of Council of Europe member states; even a wider restriction on the free choice of counsel, narrowing it down to a lawyer before all courts, cannot in itself raise issues under Article 6 of the Convention, since specific legal qualifications may be required to ensure effective defense of a person, but such a restriction of the applicant's right must have a sufficient basis in domestic law to avoid arbitrariness.

In our opinion, the systematic updating of legislation in connection with Ukraine's integration into the European Union allows us to raise the issue of improving access to the Bar on such a basis.

A characteristic feature of Ukraine is its focus on European standards of the Advocacy . The study of the legal aspects of access to the profession of lawyer is inextricably linked to the intensification of the reform

processes of the Bar, the need to raise the level of not only professional requirements, but also to maintain a balance between ensuring the fundamental rights of man and citizen and the creation of a new elite whose task will be to provide quality legal aid. The Law of Ukraine "On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand" No. 1678-VII of September 16, 2014 ratified the Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand,

According to Article 1 (2)(e), one of the objectives of the Association is to strengthen cooperation in the field of justice, freedom and security with a view to ensuring the rule of law and respect for human rights and fundamental freedoms.Also Article 14 of the Agreement states that "Within the framework of cooperation in the field of justice, freedom and security, the Parties shall attach particular importance to the establishment of the rule of law and the strengthening of institutions at all levels in the field of govermance in general and law enforcement and judicial bodies in particular, at strengthening the judiciary, increasing its effectiveness, guaranteeing its independence and impartiality, and combating corruption. Cooperation in the field of justice, freedom and security will be based on the principle of respect for human rights and fundamental freedoms".

Recommendation No. (2000) 21 of the Committee of Ministers of the Council of Europe to member states on the freedom of the profession of lawyers of 25 October 2000 refers to the fundamental role that lawyers and bar associations play in ensuring the protection of human rights and fundamental freedoms; emphasizes the need to promote the freedom of the profession of lawyers in order to protect the rule of law; "lawyer" means a person who is qualified and authorized under national law to defend and act on behalf of his or her clients, to engage in legal proceedings, to practice law and to represent them in court [12].

The Opinion of the Consultative Council of European Judges on the Relationship between Judges and Lawyers, adopted on November 13–15, 2013, No. 16 (2013) refers to the important role of judges and lawyers in the administration of justice; judges and lawyers play different roles in the judicial process, but the contribution of both professions is essential to reach a fair and effective decision in all legal proceedings in accordance with the law [1].

Therefore, Ukraine, which seeks to integrate into the European legal area, must adapt the rules by which this area operates.

A number of international normative acts enshrine and clarify the content of the right to legal aid. Thus, Principles 1, 9 of the Basic Principles on the Role of Lawyers outline the right of everyone to seek the assistance of any lawyer to protect and defend their rights and provide that no court or administrative authority shall refuse to recognize the right of a lawyer to defend the interests of his or her client in court, unless the lawyer has been denied the right to perform his or her professional duties in accordance with national law and practice and these principles. Clause 1 of the Basic Provisions on the Role of Lawyers stipulates that any person has the right to seek the assistance of a lawyer of his or her choice to assert his or her rights and defend himself or herself at all stages of criminal proceedings.

The Code of Conduct for European Lawyers of October 28, 1988 stipulates that in any law-based society the lawyer has a special role; the lawyer must act in the interests of the law as a whole – as well as in the interests of those whose rights and freedoms he or she is entrusted to protect; the lawyer must not only appear in court on behalf of the client, but also provide him or her with legal assistance in the form of advice and consultations; respect for the professional functions of the lawyer is an essential condition for the existence of the rule of law and democracy in society [4].

The Charter of Basic Principles of the European Bar Association of November 25, 2006, emphasizes that a lawyer in his or her relations with an individual, company or state plays the role of a trusted advisor and representative of the client, a professional respected by third parties, and an integral participant in the process of administering fair justice; embodying all these elements, a lawyer who faithfully serves the interests of his or her client and protects his or her rights also performs the function of a human rights defender in society, which consists in preventing and preventing conflicts, guaranteeing [19].

Important standards in the European space regarding the conditions for candidates for the legal profession are reflected in the recommendations of the Committee of Ministers of the Council of Europe, resolutions and recommendations of the Council of Bars and Law Societies from Europe (CCBE), as well as in national laws and practices of various states.

The main standards of professional training in the European Union are reflected in the CCBE principles of the Resolution on the Training of Lawyers in the EU: "training and examination in professional practice prior to qualification as a lawyer, the duration and content of that training" and "work-based learning (e.g., "internships" or "mentoring") under the supervision of a lawyer, prior to, or as the case may be, professional qualification".

There are two main models of providing professional training for lawyers: a system that includes a specialized professional school, such as in France (Bar School); or a system based on courses, as in England and Wales (this is specific to large countries with rich and developed economies). However, smaller countries usually opt for a less expensive, more flexible system that includes internships or mentoring, without having a standardized approach to prepare each person when he or she takes the exam.

In most Council of Europe states, anyone who wants to become a lawyer must obtain a law degree, pass a preliminary examination and be admitted to the bar association. All of the Council of Europe's founding member states require initial legal training or an exam to practice law. Some of them, such as Belgium, Denmark, the Netherlands, and Luxembourg, require anyone who wants to practice law to obtain a law degree, complete a three-year internship with a registered lawyer, and take a theoretical and oral argument examination at the end of the internship.

The main standards for the content of professional training can be found in the CCBE Recommendation on the Learning Outcomes for European Lawyers, which divides them into 3 main areas:

Future lawyers should not only address the specific technical legal issues they face, but also manage their tasks in a globally ethical manner, taking into account that the functions performed by a lawyer are not only for the benefit of their clients but also for society as a whole. Professional rules should be used to improve the quality of these legal services.

Prospective lawyers should have knowledge of the legal system in which they work and use these concepts to provide their clients with the most effective solutions to their problems. This means not only knowledge of the field of law, but also knowledge of the methods that ensure the correct use of the law. Lawyers should be able to guide clients to effective and timely solutions.

Recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer in Chapter II "Legal education, training and admission to the legal profession" sets out the following standards:

1. Legal education, admission to the profession and the continued exercise of the legal profession should not be denied, in particular, on grounds of gender or sexual orientation, race, color, religion, political opinion or other opinion, ethnic or social origin, membership of a national minority, property, birth or physical disability.
2. All necessary measures should be taken to ensure a high degree of legal training and integrity as a prerequisite for admission to the legal profession and then to ensure the continuing education of lawyers.
3. Legal education, including continuing education programs, shall be aimed at strengthening legal skills, raising awareness of ethics and human rights, and preparing lawyers to respect, protect and promote the rights and interests of clients and to support the proper administration of justice.

The fundamental role of lawyers in ensuring the protection of human rights and freedoms has received increased attention from national and international decision-makers. At the international level, the UN Basic Principles on the Role of the Lawyer provide that "governments, professional associations of lawyers and educational institutions should ensure that there is no discrimination against a person in connection with the admission to and the continued practice of the profession of lawyer on the basis of race, color, sex, ethnic origin, religion, political or other opinion, social or national origin, property, birth, economic or other status, except for the requirement that a lawyer must be a national of the State concerned, which will not be considered discrimination".

As mentioned above, an important role in setting standards at the European level belongs to the principles enshrined in Recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer, which states that "decisions on whether to authorize a person to practice as a lawyer or to enter the profession should be taken by an independent body. These decisions, regardless of whether they are made by an independent body, should be subject to review by an independent and impartial judicial authority".

The Common Code of Practice for Lawyers of the European Community also establishes a number of rules of professional ethics for lawyers. In addition to those mentioned in the Charter, these are, first of all, the

basic principles of the relationship between an attorney and a client: ensuring a trusting relationship with the client, advertising, fee policy (including the prohibition of remuneration "by result" – pactum de quotalitis, the issue of prepayment and division of fees with other persons), professional insurance, and the combination of attorneys' and other activities [3]. The Code also sets out the basis for the relationship between advocates and the rules of conduct for advocates participating in court proceedings.

The standards of the Bar are also provided for in Directive 98/5/EC of the European Parliament and of the Council of February 16, 1998. It states that, whereas, in accordance with Article 7a of the Treaty, the internal market shall cover an area without internal frontiers; whereas, in accordance with Article 3(c) of the Treaty, the abolition of obstacles to the free movement of persons and services between Member States is one of the objectives of the Community Whereas for nationals of Member States this means, inter alia, the possibility to practice a profession, whether self-employed or in the workforce, in a Member State other than the one in which they obtained their professional qualifications.

Whereas, according to Council Directive 89/48/EEC of 21 December 1988 on a common system for the recognition of higher education degrees awarded after vocational education and training of at least three years (4), a lawyer who is fully qualified in one Member State may already request recognition of his or her degree for the purpose of establishing himself or herself in another Member State in order to practice there under the professional title used in that State whereas the purpose of Directive 89/48/EEC is to ensure the integration of the lawyer into the profession of the host Member State.

Whereas some lawyers may be able to integrate quickly into the profession in the host Member State, in particular by passing the fitness test provided for in Directive 89/48/EEC, other fully qualified lawyers should be able to achieve such integration after a certain period of professional practice in the host Member State under the professional titles of their home country, or continue to hold the professional titles of their home country. Whereas, at the end of this period, the lawyer should be able to integrate into the profession in the host Member State after verification that he or she has professional experience in that Member State.

Whereas action at this level is justified at Community level not only because, compared to the general system of recognition of diplomas, it provides lawyers with simpler means by which they can integrate into the profession in the host Member State, but also because, by allowing lawyers to permanently practice their professional titles in their country in the host Member State, this meets the needs of consumers of legal services who, due to the increase in trade flows arising, in particular, from the domestic market, seek advice in carrying out cross-border transactions, in which international law often intersects , Community law and domestic law.

Taking into account that action is also justified at Community level, since only some Member States already allow the practice of lawyers in their territory, otherwise than by providing services, by lawyers of other Member States working under their national professional titles; whereas, however, in the Member States where this possibility exists, the practical details regarding, for example, the scope of activities and the obligation to register with the competent authorities vary considerably; considering that such different situations lead to inequality and distortion of competition between lawyers of Member States and are an obstacle to freedom of movement; whereas only a directive laying down the conditions governing the practice of the profession, other than by the provision of services, to lawyers practicing under their national professional titles, can resolve these difficulties and provide equal opportunities for lawyers and consumers of legal services in all Member States .

The standardization of the legal profession should be of interest to lawyers themselves. It will be attractive to advocates because it will encourage them to constantly improve their professional level, develop, and share their experience through a clearly defined mechanism of information exchange, taking into account the ethical and professional characteristics of the practice of law. Young professionals will have access to professional information that was previously closed to them, with the possibility of developing a client base over time. Experienced attorneys will have the opportunity to realize themselves as mentors, passing on their knowledge and experience to new generations of the legal profession. In addition, experienced attorneys will have more time to devote to research, thus developing the institution of the bar itself. Standardization of the practice of law is by no means intended to restrict the professional activities of attorneys or to establish any framework for them. On the contrary, the standards of the Bar can and should relate to, and subsequently have a positive impact on, the moral character of each attorney, in particular, and the Bar as a whole. Such standards relate to all aspects of the professional activity of advocates, including elements of both business style and manner of behavior in court and communication.

It should be noted that the functioning of the Bar is a guarantee of constitutional rights and freedoms of citizens, but the activity of lawyers requires a logically balanced and practically sound system of these legal guarantees. It is necessary to create a coherent, well-coordinated system of guarantees of the practice of law, which would enable the Bar, relying on the law, to fully exercise its honorable duty to protect the rights of citizens.

The analytical review of the European Court of Human Rights "Privileges of the Legal Profession" contains a number of decisions on the rights of lawyers and guarantees of the practice of law within the meaning of the Convention of Fundamental Rights and Freedoms. Having analyzed numerous judgments of the European Court of Human Rights on applications of persons who are lawyers, we can say that deviations from the law have become permanent. The most frequent violation is Article 8 of the Convention, which not only protects all correspondence between individuals, provides enhanced protection of correspondence between lawyers and their clients, and also facilitates the exercise of lawyers' rights, since the concepts of "private life", "home", "correspondence" are considered by the European Court of Human Rights in a broad sense. And while the issue of searching an advocate's office and controlling correspondence has already been sufficiently considered, substantiated and clarified by the European Court, the issue of confidentiality of communication between an advocate and a client is still controversial and little researched.

In the judgment "Nimitz v. Germany" [18] the European Court of Human Rights noted that the professional activity of a lawyer is very closely related to private life within the meaning of Article 8 of the Convention. According to para. 37 of the said Judgment, the court found that during the search of the lawyer's office there was an encroachment on professional secrecy to the extent that is not proportionate to the circumstances; in this regard, the court emphasized that the encroachment on professional secrecy of a lawyer may have negative consequences in the administration of justice and thereby violate the rights guaranteed by Article 6 of the Convention. In addition, the European Court of Human Rights noted that the concomitant publicity of the fact of the search of the lawyer's office may adversely affect the professional reputation in the eyes of both the lawyer's clients and society as a whole. Therefore, the search of the lawyer's office in this case constitutes a violation of Article 8 of the Convention.

In the "Kopp v. Switzerland" [17] judgment of 1998, the applicant insisted that the tapping of his law firm's telephone lines was not lawful under Swiss law. Firstly, the Court is not satisfied with speculation as to the capacity in which Mr. Kopp was subjected to the tapping, since he is a lawyer and all telephone lines of his law firm were tapped. Secondly, the recording or other forms of interception of telephone conversations constitute a serious interference with private life and correspondence and must therefore be based on the law, which is particularly important. Clear, detailed rules on this issue should be in place, given that the technologies used for this purpose are becoming increasingly sophisticated.

The European Court noted that Article 8 of the Convention protects the fundamental right to professional secrecy and stated that imposing an obligation on lawyers to report suspicions does not constitute an excessive interference in view of the public interest in combating money laundering. The lawyer's professional privilege is not absolute. It must be weighed against measures aimed at combating the laundering of the proceeds of illegal activities, which may themselves be used to finance criminal activity.

Article 10 of Directive 98/5, entitled "Engagement of a lawyer of the host Member State", contains the following provisions: "A lawyer practising under his professional title of origin shall guarantee an effective and regular activity of at least three years in the host Member State and the law of that State, in particular, Community law shall be exempt from the conditions referred to in Article 4 (1)(b) of Directive 89/48/EEC for access to the legal profession of the host Member State. "Effective and regular practice" means the actual exercise of the practice without interference other than that resulting from the events of daily life".

On these grounds, the Court (Grand Chamber) held: "Article 9 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 on the promotion of the permanent practice of the profession of law in a Member State other than the one in which the qualification was acquired, should be interpreted as excluding an appeal procedure in which a decision to refuse registration referred to in Article 3 of this Directive must be appealed in the first instance to a body consisting exclusively of lawyers practicing under the professional title of the host Member State and, on appeal, before a body consisting mainly of such lawyers, while an appeal to the highest court of that Member State does not allow judicial review only in law and not in fact".

Consequently, one of the most important issues in the activities of an attorney-at-law is the protection and enforcement of attorney-client privilege. The principle of confidentiality is fundamental to the relationship between the attorney and the client. The advocate must keep confidential all information provided to him or her by the client. At the same time, the information may be disclosed with the written permission of the client, as well as, if necessary, on the basis of the law.

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