

## MODELS OF THE BAR'S INSTITUTE ORGANIZATION IN EUROPEAN UNION AND CENTRAL ASIA: A COMPARATIVE LEGAL STUDY

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### Summary.

This article aims to reveal the main models of implementation of the bar in the European Union and Central Asia. As some of European Union's neighboring countries are about to embark on EU accession negotiations, they are looking to reform their justice systems to align them with EU standards.

The article provides a comparative legal characteristic of the organization models of the advocate self-government bodies in the European Union and Central Asia countries from the point of view of compliance with international standards of Bar's independence. The authors have identified typical violations of the independence of lawyers' self-government bodies by the executive bodies of state power in Central Asian countries, shown the degree of their influence on protecting human rights and freedoms, and formulated recommendations aimed at overcoming existing violations'.

Advocate self-government should be considered as a manifestation of the principle of independence of the Bar. Since the definition of «independence» is used in a narrow legal sense, it should be understood exclusively as a known measure of legal freedom, free discretion in actions within the boundaries outlined by law. With regard to the Bar, the term «independence» should be interpreted in the context of Recommendations Rec (2000) 21 to the Committee of Ministers to member states on the freedom of exercise of the profession of a lawyer as «freedom of the profession from any undue restrictions, influences, pressure, threats or interference, direct or indirect, from any side or for any reason.

By «independence of the Bar» we mean such a legal status of the bodies of the advocates' community, established by law, which allows them to autonomously and independently from improper interference solve issues of their internal organization, as well as other tasks defined in the law, that is, to exercise self-government.

**Key words.** Organization of the Bar, self-government models of the Bar, independence of the Bar, the Bar of the European Union, the Bar of the Central Asian countries, guarantees of advocacy, international standards of the profession of advocate

### 1. Introduction

The independence and self-regulation of advocates are essential in ensuring the rule of law in any jurisdiction. The advocacy has guarantees of independence in every democratic state governed by the rule of law. The 1990 UN Principles on the Role of Lawyers, the Charter of Core Principles of the European Legal Profession, the Code of Conduct for European Lawyers, and other international documents declare the legal profession's independence and self-government as defining values. Although advocacy in the modern world is carried out on the principle of self-organization of advocates and advocacy communities, there are few countries in the world where advocates are fully self-regulating without any supervision, guidance, or restrictions from other sources, such as the executive, legislative or judicial branches of government. In legal theory, the question of the most acceptable forms of organization of the advocacy is highly controversial.

History has proven that law and lawyers (law and lawyer) become the most important element for a society, in any part of the world where the community is located. The public is unlikely to be able to live well without the presence of law and lawyer. Advocates are a noble, noble and honorable profession (*officium nobile*), in carrying out their professional duties, advocates must hold fast to the laws and codes of ethics of advocates (Nuna M., Kodai D.A., Moonti R.M., 2020).

### 2. Theoretical framework or Literature Review

In legal theory, the question of the most acceptable forms of organization of the legal profession is very controversial. A lot of works have been devoted to the problems of the organization and activities of the Institute of the Bar, including in the EU countries, in particular, by such scientists as: A. Boon, N. Bakayanova, T. Vilchyk, Alice Woolley, A. Dekhanov, S. Kucherov, A. Ragulin, Roger Smith, Rene Kassen, M. Kiku, M. Kuzins, F. Reagan, I. Yartykh, etc.

However, a special comparative legal study, which would be devoted to the study of the organization of lawyers' self-government bodies in European and Central Asian countries, has not been carried out at present. Therefore, based on the above, this topic of the article seems relevant and original.

### 3. Methodology

The material used for the scientific research was international documents, national legislation of the countries of the European Union and Central Asia, including the new strategy in relations with the countries of Central Asia, adopted by the Council of the European Union, as well as the researches of scientists

involved in the organization and activities of the Bar, its relationships with government agencies, the principles of its organization and activities. The article uses comparative legal, historical, analytical, statistical and other methods of scientific research.

### 4. Results and discussion

One of the basic, necessary elements of the legal status of an advocate is the guarantees of his professional activity. In legal literature, they are considered as a means of effectively exercising the powers of the lawyer, since «whatever amount of rights, even the largest, would be possessed by a particular participant in the process, without the corresponding guarantees, it will be just a declaration» (V. Zaborovskyy, S. Buletsa, Y. Bysaga, V. Manzyuk, 2020).

According to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana in 1990, lawyers have the right to form and be members of independent professional associations that represent and defend their interests, and contribute to their continuing education and training. Professional organizations of advocates have broad powers and often take an active part in the regulation of advocacy and the implementation of state policy in the field of protecting the rights and legitimate interests of the individual. However, it is not enough to fulfill an important condition for the correct organizational design of the Bar's institution, no less important is the issue of real ensuring the independence of the self-government body from state authorities and persons performing executive and administrative functions. The legal profession's independence is a fundamental principle characterizing the legal nature and status of the advocacy, enshrined in the legislation of many countries, constituting the foundation of the rule of law, the main guarantee of the observance and protection of human rights. The Council of the European Union (EU) has approved a new strategy for relations with the countries of Central Asia. The framework for EU relations with the region depends, *inter alia*, on their willingness to reform, strengthen democracy, human rights, the rule of law, and the independence of the courts.

The fulfillment of these conditions is impossible without improving the organization and activities of bodies designed to protect human rights, among which the Bar occupies the central place.

It should be noted that the advocate profession is characterized by a lower degree of formalization and normative assignment of the form of expression in a legal case and regulation of conduct, especially

its moral and ethical component, as well as relative independence and independence from state policy, than, for example, in the case of a judge, prosecutor or investigator. This specificity of the activity of the studied specialty may give rise to a feeling of permissiveness and impunity among its representatives, who are not distinguished by law – abiding and stability of moral principles and, accordingly, lead to professional deformations (Grammatikov V., 2020).

### 5. Terminology issues

First of all, it is necessary to address the terminological issues of the research topic. By «organization of the Bar,» we mean the legal and organizational structure of the Bar, created for the effective implementation of the tasks assigned to it. With the help of organizational structures, both the advocates' activity itself is carried out directly, and legal, social, and other guarantees of this activity are provided, including the protection of advocates from illegal actions and interference in the Bar's activities by the state. The organizational structure (system) of the institute of the Bar, in turn, means the totality of self-government bodies, advocates' formations, public associations of advocates, and diverse connections between them, ensuring the integrity of the Bar as a human rights institution, the preservation of its fundamental characteristics under various internal and external changes (Vilchuk T.B., 2015).

The essence of professional self-government lies in the fact that advocates do not have any outside power over themselves and are subject only to the single will of their professional class and the advocacy profession's rules. That becomes possible only after the creation of the Bar as a separate and self-governing human rights organization (Paniiko Yu., 2002).

Self-government in explanatory dictionaries means «the independence of any organized social community in the management of its own affairs». If «independence of an advocate» means the ability of a lawyer to freely, at his own discretion, based on his inner conviction and within the limits of his authority, to provide professional legal assistance to his client, then by self-government in the bodies of the Bar we propose to understand such a form of organization of its activities that allows to freely at its own discretion and within the limits of its powers granted by law, to manage its own business.

### 6. Interaction of the Bar with state institutions

As noted in the Basic Principles on the Role of Lawyers adopted by the Eighth UN Congress, regardless of their structure, Bar associations should be institutionally independent of government, other executive authorities, and external sources of influence, and such independence should be protected both at the level of law and in practice. The Singhvi Declaration states that professional self-government bodies must have not only a well-developed structure but also sufficient powers,

which must be effectively implemented in such a way as to ensure the independence of the legal profession, uphold the honor, dignity, high moral qualities, competence, ethics and norms of behavior of advocates, as well as to protect their role in society (paragraph 99).

The Bar's independence is determined not only by its ability to resolve internal issues independently but also by the nature of relations with state institutions. The Bar's independence is a state of balance between the interests of this institution and the state, corresponding to the highest constitutional value – ensuring human rights. This independence can be limited only in the interests of adequate performance of professional duty by an advocate and in the interests of justice within limits arising from the principles of professional ethics and procedural legislation (Vilchuk T.B., 2014).

However, the principle of the independence of the Bar provided by law usually does not have an unambiguously understood normative consolidation in terms of the delineation of powers to manage the advocacy between the state and the Bar and makes it possible to change and/or apply the law arbitrarily (Pospelov O.V., 2008). Moreover, the Bar cannot be absolutely independent and has never been so in view of the fact that the most important mechanism of external control of the Bar by the state is its inalienable right to create a legislative framework that advocates, advocates' formations and corporate governance bodies are obliged to observe.

According to Yale University professor, attorney Alice Woolley, there is no crucial problem with state interference in advocates' activities; the only problem is that this state intervention is of a unique nature. Analyzing the work of advocates' associations, the author points out that the latter exercise the powers provided by law and are subject to judicial control if they exceed these powers. Also, advocates are subject to obligations arising from other rules provided for by law, as well as court decisions.

It should be noted that the problems of interaction between the Bar and the state or the so-called «theory of management of the Bar» are insufficiently studied in modern science. Scientists note the dual nature of this management – corporate (self-government) and state (Yartykh, I. S., 2007). The authors mainly devote their research to the role and importance of the Bar in the judiciary (Vilchuk T., 2018). We noted in our works that, based on the legal nature of the Bar, the status of an advocate as a litigation participant and an integral part of the administration of justice, the primary duty of an advocate is to assist in the administration of justice. To carry out its functions, the Bar must have the same independence as the judiciary, which is vital for the fair administration of justice, the strengthening of democracy, and the rule of law.

Bar as a professional institution best meets the needs of society to secure the right to legal aid under international standards. However, the improvement of the legal aid sphere should not lead to a narrowing of the

institution of representation as such and the personal involvement of legal persons in court cases (Bakaianova N., Svyda O., Demenchuk M., Dzhaburiya O., Fomina O., 2019).

Historical experience shows that the Bar has been under state control for a long time. And now, the rudiments of state guardianship have been preserved in most countries of the world. They are also typical (in terms of recruiting the Bar, control of disciplinary practice) also for Western democracies. Thus, the state executive and judicial authorities of the European Union's leading states (France, Germany, etc.) usually have significant powers to control the formation of Bar associations, their disciplinary and even fee-based practice. In the EU countries, this control is external in nature and presupposes a certain state intervention in the internal affairs of Bar's self-government bodies (Dekhanov S.A., 2011). As for the organization of the legal profession on the territory of the post-Soviet space, as evidenced by the historical experience, the legislators of 1864 had to consult foreign patterns for the creation of the new institution, the bar. Two different systems of representation function in Western Europe: one is used in England, France, and Belgium, the other in Germany and Austria (Kucherov S., 1956).

Simultaneously, the organizational unity of advocates is essential not only from the perspective of public control over their activities but also from the point of view of protecting their professional interests. After all, it is no secret that in the face of a clash of economic interests, political opponents' interests, the advocates who represent them also become targets for pressure. In such a situation, «United we stand, divided we fall» and only a professional corporation of advocates can protect the interests of an advocate» (Dekhanov S.A., 2010). Back in 1902, M. Vinaver noted that «the independence of the Bar will always be a refuge for every citizen against anger and assault by the authorities, against unjust persecution. Everything can be feared when it is destroyed; nothing is scary if it holds on and knows how to instill respect» (Vinaver M.M., 1902).

### **7. Models of advocates self-government in the European Union countries**

The Bar Corporation provides a clear example of self-government. In the countries of the European Union, as we noted in our previous works, there are various models for organizing the self-government of the Bar. The most common is the classical model, in which membership in the Bar is associated with membership of the Bar Chamber. Such a structure operates on the basis of the principle of corporate governance, under which part of the powers of a member of the chamber is delegated to management bodies. The activities of advocates are carried out on the basis of the charter of the organization, membership in which, and payment of membership fees are mandatory. A person who is not

a member of a professional organization of advocates does not have the right to practice as an advocate. This model is followed by Spain, the Netherlands, Belgium, France, Italy, Greece. The second model is characterized by the fact that chambers are formed on a territorial basis and unite all advocates included in the list on the territory of a particular federal state. The jurisdiction of each chamber of advocates extends to the territory of the federal state for which this chamber was founded, as well as to all advocates included in the list of this chamber of advocates. Austria is a typical example of this model. The self-government of the Bar in Germany includes the mandatory features of both models.

The next model provides for self-government of the Bar through associations and unions. For example, the Bar Association in Sweden, the Bar Association in Switzerland. The fourth model assumes the implementation of management through judicial Inns, the last one – management with the legal community's help (Great Britain). Switzerland (Bar Association), Sweden (Bar Association) can also be referred to this model with certain reservations. All these models, except for the model that provides for the self-government of the Bar through associations and unions, are united by the fact that membership in the chamber, collegium, judicial Inna is mandatory.

Depending on the number of professional advocates' organizations, the model of a single professional organization and several professional organizations' model should be distinguished. The most widespread and popular model is the one professional organization model. In small countries, there is one national organization of advocates; in large countries, the structure of bar associations includes local (regional) associations. The list of countries with the model of a single professional organization includes Cyprus, Turkey, Sweden.

The membership in the bodies of advocate self-government can be both voluntary and generally obligatory, and in some countries, there is a combination of these two principles (for example, Germany). By the nature of the functioning of self-government bodies and the degree of separation of powers between the Bar and the state, we single out the etatist model and the model of a self-governing corporation with elements of state control (Anisimov V., Kudrina Ye., 2017). The etatist model assumes that the Bar is part of the state apparatus. Thus, the Norwegian Bar Association is not a self-governing corporation. The management and supervision of advocacy in Norway is carried out by a special government body (Advocate Licence Committee), and the Ministry of Justice has the final say on the revocation of licenses.

The chambers of advocates in Austria and Germany are merged into the Federal Chambers of Advocates, which, being corporations of public law, act as a body of indirect state administration since control over the activities of the advocates' corps in Germany is carried out directly by the state represented by the executive bod-

ies. The main body of advocates' self-government in the Austrian Chamber is the Plenary Session of the members of the Chamber. The main functions of the Chamber of advocates are representation, protection of the professional, social, and economic interests of advocates who are in the register of the Chamber of advocates. Of particular interest are such functions of the Committee as submitting legislative proposals and opinions on bills, reports on the state of justice, as well as on shortcomings and proposals related to justice on the territory of the federal state, for which the Bar Association was established (Anisimov V., Kudrina Ye., 2017).

There are two types of advocates' associations in Germany: The Federal Bar Association (Bundesrechtsanwaltskammer) and the German Bar Association (Deutscher Anwaltverein). Regional chambers of advocates (regionale Rechtsanwaltskammer) are the backbone of advocates' self-government in Germany. Each advocate is mandatory a member of one of them. The German Bar Association (Deutscher Anwaltverein – DAV) is, in contrast to the Federal Chamber of Advocates, a voluntary professional association

Thus, in Germany, there is a combination of compulsory and voluntary membership in the Bar. The advocacy in Germany is based on a combination of state control (represented by the Ministry of Justice and the Supreme Land Courts) over advocacy with the self-government of bar associations in chambers that have such self-governing bodies as the board, presidium, and General meeting of members of the chamber (Berufsrecht der Anwaltschaft).

Like other European countries, the Bar in the Republic of France is based on a combination of state control functions (represented by the Supreme Courts) over advocacy with an apparent organizational coherence of advocates within each collegium. The Italian Bar acts under the control of state bodies (represented by the Ministry of Justice, higher courts) in the form of a self-governing corporation with developed centralized structures and the only self-government bodies: The Council of the Order and the General Meeting of Members (G. Vitiello, 2004).

By the nature of the legal regulation of the organizational and functional foundations of self-regulatory advocates' organizations, a public law model of a advocates' corporation and a private law model of a advocates' corporation are distinguished. The countries of the public law model are Germany, Austria, the Netherlands, and others.

#### **8. Models of advocates self-government in Central Asian countries**

Two models of bar management in Central Asian countries should be distinguished. The first model is the classic one, in which membership in the Bar's bodies is associated with membership in the Chamber of Advocates. Such a structure is based on corporate governance principles, where the members themselves are

the source of rights and powers, some of which they delegate to the advocates' management bodies. A person who is not a member of a professional organization of advocates cannot obtain the right to practice law. The Republic of Uzbekistan adheres to this model.

According to the legislation of the Republic of Uzbekistan, the Bar is a legal institution that includes independent, voluntary, professional associations of persons engaged in advocacy and individuals engaged in private advocacy. As follows from the Uzbek legislator's definition, the Bar includes both associations of advocates and advocates themselves. In its content, this definition is close to the doctrinal definitions of the institution of the Bar in Europe, where the term Bar covers both all persons recognized as advocates under the laws of this country and an organization of advocates that has a legal basis and its own competence (Dekhanov S.A., 2010).

The second model is characterized by the fact that membership in the bar is associated with compulsory membership in the bar association. At the same time, the bar performs a double role. On the one hand, it is the governing body (self-government) of the advocacy. On the other hand, it is an organizational and legal form of advocacy. This model is followed by the Republics of Turkmenistan, Tajikistan, and Kazakhstan. Thus, the Union of Advocates of the Republic of Tajikistan is a single, independent, non-governmental and non-profit professional organization based on the compulsory membership of advocates of the Republic of Tajikistan (Articles 1, 37 of the Law of the Republic of Tajikistan «On the Bar and advocacy»).

Usually, the main body of advocate self-government in Central Asian countries is the collegial body (Congress, Association, Council, Collegium, Committee). The bar of the Kyrgyz Republic occupies a unique position. The current law on the advocacy of the Kyrgyz Republic does not envisage either a collegium of advocates or a chamber of advocates as a self-governing body of the advocacy and, consequently, the creation and functioning of a unified bar association. Following Article 5 of the Law «On the Bar of the Kyrgyz Republic and Advocacy» of 2014, there are only two governing bodies: The Congress of Advocates and the Council of Advocates, as well as commissions (audit, qualification). In general, characterizing the Law adopted in 2014, it should be noted that it raised the status of the advocate's community, giving it independence and at the same time established the civil liability of advocates, including to persons whom they provide legal assistance.

The unified system of self-government of the Bar in the Republic of Uzbekistan is formed by the Chamber of Advocates along with its territorial departments, which is a non-profit organization based on the compulsory membership of all advocates of the Republic of Uzbekistan (Article 121 of the Law «On the Bar»). At the same time, a license to acquire the status of an advocate in Uzbekistan is issued by the Ministry of Justice

of the Republic on the basis of decisions of the relevant qualification commissions (Article 31 of the Law).

As for the maintenance of registers of advocates and advocates' associations, then, as in the EU countries, in Central Asia such registers are usually operated by the bodies of advocates' associations (for example, the bar associations – in France, Spain, Italy, Czech Republic, Hungary, Sweden, Finland, the Republic of Uzbekistan), or executive authorities in the field of justice (for example, in Norway, Turkmenistan, Tajikistan), or judicial authorities (partly, in Germany).

### **9. The issues of the independence of advocate in Central Asian countries**

The legal profession's independence is a principle enshrined in the legislation of each of the five Central Asian states. In practice, however, the organization of the legal profession in these states has institutional weaknesses, which imply both weak internal governance and insecurity from outside pressures in the face of which bar associations can be passive and to which they are readily amenable (report of the International Commission of Jurists (ICJ), 2010). The legal profession's independence is primarily influenced not by the fact that the state body issues licenses to lawyers but by the fact that it revokes them at will. Thus, the Law of the Republic of Kazakhstan «On advocacy» provides for the activities of the authorized state body in the field of legal assistance, which defined in Art. 1 of the Law as a «central executive body that ensures the organization of legal assistance, as well as control over its quality», which has relatively broad powers to manage the bodies of the Bar (Art. 23 of the Law). Following Part 1 Article 39 of the Law, the personal composition of the commissions for attestation of persons applying for advocacy and the rules of their work are approved by orders of the Minister of Justice of the Republic of Kazakhstan. And under the Rules for the provision of public services, «Issuance of a license to engage in advocacy» dated 28.05. 2020 this service is provided by the Ministry of Justice of the Republic of Kazakhstan.

In the Republic of Tajikistan, a Qualification Commission is created under the Ministry of Justice of the Republic to resolve the issue of obtaining and terminating the status of an advocate, as well as conducting certification of advocates (Article 13 of the Law «On the Bar and Advocacy»). In accordance with Article 20 of the Law «On the Bar of the Kyrgyz Republic and advocacy «the decision on admission to the qualification exam is made by the Ministry of Justice of the country, and the qualification exam itself is conducted by the qualification commission under the Ministry of Justice of the Kyrgyz Republic (Article 21 of the Law). This body decides on the suspension, revocation of the license, and termination of the license for the right to practice law (Article 22 of the Law) and maintains the state register of advocates (Article 23). As

noted in the report of the ICJ mission in relation to this republic, at the initial stage of the creation of the Bar, such influence from the outside and the participation of third parties is necessary, but in the long term, it is crucial for the Bar to become a sufficiently strong institution that can organize the legal profession free from undue influence from outside, whether from government bodies or private individuals (report of the International Commission of Jurists (ICJ), 2010).

Thus, licensing is actually an additional link in the admission process to an advocate's profession, which creates additional obstacles for persons wishing to practice law. Moreover, since the licensing process is controlled and managed by the state and is mostly not regulated by the draft law, it actually undermines or even denies the guarantees of independence and objectivity in admission to the profession that are embodied in the certification process. We agree with the opinion of the UN Special Rapporteur on the Independence of Judges and Lawyers that licensing systems operated by government agencies are contrary to international standards for the independence of the legal profession (Report, UN Doc A/71/348, 2016). The licensing function should belong to the bar association, not a government agency, and the license should be issued automatically upon successful completion of the certification exam. On the other hand, the licensing authority should be entitled to refuse to issue a license only on very narrow, well-defined technical grounds, an exhaustive list of which should be contained in the law (for example, incomplete or incorrectly submitted documents).

Before the 2008 reform in Uzbekistan, the legal profession operated under a legal regime similar to that of the Kyrgyz Republic. The Bar Association of Uzbekistan acted as a public association and did not have certain powers to manage the advocacy community, nevertheless it was a representative organization with a highly developed structure and local branches in each of the regions, which were part of the republican association. However, as a result of the 2008 reform, the independent Bar was actually abolished, and a structure was created, the head of which is appointed and dismissed directly by the Ministry of Justice, which makes this system an anomaly both in Central Asia and among all CIS countries. Thus, the Chamber of Advocates' chairman is elected by the Conference of the Chamber of Lawyers on the proposal of the Ministry of Justice of the Republic of Uzbekistan from among the members of the Board of the Chamber of Advocates elected by the Conference. Early withdrawal from the office of the Chairman of the Chamber of Advocates is also carried out on the proposal of the Ministry of Justice of the Republic of Uzbekistan (Articles 12-1, 12-3 of the Law). According to the country's advocates, the judicial authorities actively interfere in the activities of the advocacy of Uzbekistan, violating the internationally recognized principles of the independence of the advo-

cate's profession and self-government of the advocate's community (ICJ Mission Report,2015).

In addition, there are a number of cases of interference in the management of the Bar in Central Asia by the executive authorities. Thus, the UN Human Rights Committee, in its Concluding Observations on the periodic report of Tajikistan submitted on the basis of the International Covenant on Civil and Political Rights, concluded that advocates «are subject to outside interference, in particular from the Ministry of Justice». One of the cases of excessive pressure reported by advocates took place during the first Congress of Advocates in September 2015, when the Ministry of Justice demanded that advocates elect a Chairman suitable to the executive authorities of Tajikistan. This case can be considered an example of interference with the independence of the legal profession, in violation of the UN Basic Principles on the Role of Lawyers (ICJ Mission Report,2015).

Bar associations should be completely independent of government and other executive authorities. This independence must be protected both in law and in practice. As noted in the ICJ recommendations, it is necessary to put an end to any form of direct participation of the executive in the governing bodies of the Bar in order to ensure the independence of the profession following international standards: to put in place guarantees of protection against the informal, indirect and unjustified influence. However, bar associations' independence from the government does not exclude their cooperation with governments on relevant issues. UN Basic Principles recognize that such cooperation is often necessary to ensure sufficient and equal access to legal services, and to enable advocates to advise and assist clients, without undue interference, in accordance with the law, recognized professional standards and ethical norms (ICJ Recommendations, 2016).

To strengthen the independence of the advocacy and its authority in society, it is necessary to inform the population that it is the advocacy called upon to represent and defend the interests of citizens, including in relations with state bodies. As noted by the vice-president of the Federal Chamber of Lawyers (BRAK), Dr. Ulrich Wessels, the society should support advocates since it is they who are interested in independent advocacy, to whose members you can always apply for protection. When citizens understand that it is advocates who are their representatives, they can ensure the observance of their rights, they will demand that politicians and the state strengthen the independence and improve the quality of advocacy (Ulrich Wessels,2016).

## 10. Conclusions

1. In the EU countries, professional organizations of advocates have broad powers and often take an active part not only in the regulation of advocacy but also in the implementation of state policy in the field of legality and human rights. Depending on the number of professional advocates' organizations in the EU countries, a

model of a unified organization of advocates' self-government and a model of several professional advocates' organizations have developed. Membership in these organizations can be either voluntary or generally binding. The model of a unified professional organization of advocates is the most common.

2. State control over an advocates' association is observed in almost all European countries. If this control can be characterized as minimal, not having a significant impact on the degree of protection of the rights and legitimate interests of citizens of these countries, then concerning the Central Asian countries, we should talk about stricter state control and interference by the state in the management of the advocacy.

3. The balance of relations and the principle of non-interference in the work of the Bar's institution takes place in some countries such as the Republic of Italy, the Czech Republic, Finland, Norway, and Kazakhstan.

4. The structure and degree of autonomy of bar associations in Central Asian countries vary. The peculiarities of the system of organization of the Bar in Central Asian countries include the following:

- in Central Asian countries, where the functions regulating admission to the profession and initiation of disciplinary proceedings against advocates are carried out or controlled by the executive authorities or with their participation, the independence of the advocacy seems questionable;

- among the countries of Central Asia, in terms of state control over the system of advocates' self-government bodies, Kazakhstan occupies a special place, where an independent and relatively strong self-governing bar association was created. In contrast, the reform of the legal profession in Uzbekistan in 2008 resulted in the replacement of independent advocates' associations with an organization fully controlled by the government;

- the current law on the advocacy of the Kyrgyz Republic does not envisage either the collegium of advocates or the chamber of advocates as a self-governing body of the advocacy and, consequently, the creation and functioning of a unified bar association;

- despite the existence of advocates' self-government bodies, which independently decide the issue of admission to the advocates' profession, licensing issues in many countries are the competence of state authorities. The only Central Asian state where licensing issues have been transferred to the self-governing body of the advocacy is the Republic of Uzbekistan.

5. The advocacy organization in Central Asian countries needs to ensure its independence following international standards. Such independence must be established both at the level of legislation and in practice.

6. The licensing function should belong to the bar association, not a government agency, and the license should be issued automatically upon successful completion of the certification exam. The licensing authority should be entitled to refuse to issue a license only

on very narrow, well-defined technical grounds, an exhaustive list of which should be contained in the law.

7. To strengthen the independence of the legal profession and its authority in society, it is necessary to inform the population that it is the advocacy that is called upon to represent and defend the interests of citizens, including in relations with the state bodies.

#### Bibliography:

1. **Анисимов, В.Ф., Кудрина, Е.Н.** (2017). Классификация моделей организации адвокатуры. *Вестник Югорского государственного университета*. 1-2 (44), С. 87–92.

2. Bakaianova, N., Svyda, O., Demenchuk, M., Dzhaburiya, O., & Fomina, O. (2019). Advocacy of Ukraine under constitutional reform. *Amazonia Investiga*, 8(22), P. 574-579. URL: <https://amazoniainvestiga.info/index.php/amazoniaarticle/view/805>.

3. **Деханов, С.А.** (2011). *Адвокатура в Западной Европе: опыт и современное состояние* (дис. ... докт. юрид. наук: 12.00.11 – судебная власть, прокурорский надзор, организация правоохранительной деятельности, адвокатура»). Москва, 383 с.

4. **Деханов, С.А.** (2010). Анализ законодательства, регулирующего организацию и деятельность адвокатуры в Средней Азии. URL: <http://naukarus.com/analiz-zakonodatelstva-reguliruyushchego-organizatsiyu-i-deyatelnost-advokatury-v-stranah-tsentralnoy-azii>.

5. **Vitiello, G.** (2004). Ordine e Deontologia Forense. *Dalla Officina Grafica Iride*. Napoli, 2004.

6. **Grammatikov, V.** (2020). Problems of deformation of professional legal consciousness in modern Russia (as exemplified in advocacy). *Amazonia Investiga*, 9(26), 254-262. URL: <https://doi.org/10.34069/AI/2020.26.02.29>.

7. **Kucherov, S.** (1956). The Legal Profession In Pre- and Post- Revolutionary Russia. *The American Journal of Comparative Law*. Volume 5, Issue 3, P. 443-470. URL: <https://academic.oup.com/ajcl/article/5/3/443/2586691?searchresult=1>.

8. **Nuna, M., Kodai, D.A. & Moonti, R.M.** (2020). Code of Ethics and the Role of Advocates in Providing Legal Aid to the Poor. *Indonesian Journal of Advocacy and Legal Services*. 1(2), P. 259-274. DOI: 10.15294/ijals.v1i2.35986.

9. **Панейко, Ю.** (2002). *Теоретичні основи самоврядування*. Львів: Літопис, 2002. 196 с.

10. **Поспелов, О.В.** (2008). *Формы адвокатских образований*: автореф. дис. .... канд. юрид. наук: спец. 12.00.11). Москва, 2008. 30 с.

11. **Zaborovskyy V., Buletsa S., Bysaga Y. & Manzyuk Vasyl** (2020). Compliance of guarantees of professional activity of ukrainian advocate with international standards of profession of advocate. *The Lawer Quarterly*. Vol 10, No 2. URL: <https://tlq.ilaw.cas.cz/index.php/tlq/article/view/404>.

12. **Vilchuk, T.** (2018). Duties of a Lawyer to a Court and to a Client. *Russian Law Journal*. 6(4), P. 62–99.

13. **Вільчик, Т.Б.** (2014). Реалізація принципу незалежності професійної діяльності адвокатів у взаєминах з державною владою. *Вісник Академії адвокатури України*. Т. 11, № 2, С. 63–74.

14. **Вільчик, Т.Б.** (2015). Системи органів адвокатського самоврядування в країнах Європейського Союзу: Італія, Німеччина, Франція. *Право та інноваційне суспільство*. 2 (5). URL: <http://apir.org.ua/wp-content/uploads/2015/12/Vilchuk.pdf>.

15. **Винавер, М.** (1902). *Очерки об адвокатуре*. С.-Пб.: Кн. скл. тип. М. М. Стасюлевича, 224 с.

16. **Яртых, И. С.** (2007). *Адвокатура и гражданское общество: монография*. Ульяновск: Обл. типография «Печатный двор». 335 с.

#### References:

1. **Anisimov, V.F., Kudrina, Ye.N.** (2017). Klassifikatsiya modeley organizatsii advokatury [Classification of models of the organization of advocacy]. *Vestnik Yugorskogo gosudarstvennogo universiteta*. 1-2 (44), С. 87-92. [in Russian].

2. Bakaianova, N., Svyda, O., Demenchuk, M., Dzhaburiya, O., & Fomina, O. (2019). Advocacy of Ukraine under constitutional reform. *Amazonia Investiga*, 8(22), P. 574-579. Available from: <https://amazoniainvestiga.info/index.php/amazoniaarticle/view/805> [in English].

3. **Dekhanov, S.A.** (2017). *Advokatura v Zapadnoy Yevrope: opyt i sovremennoye sostoyaniye* [Advocacy in Western Europe: experience and current state] (Doctor's thesis). Moskva. [in Ukrainian].

4. **Dekhanov, S.A.** (2010). *Analiz zakonodatel'stva, reguliruyushchego organizatsiyu i deyatelnost' advokatury v Sredney Azii* [Analysis of the legislation regulating the organization and activities of the bar in Central Asia.]. Available from: <http://naukarus.com/analiz-zakonodatelstva-reguliruyushchego-organizatsiyu-i-deyatelnost-advokatury-v-stranah-tsentralnoy-azii> [in Russian].

5. **Vitiello, G.** (2004). Ordine e Deontologia Forense. *Dalla Officina Grafica Iride*. Napoli, 2004. [in English].

6. **Grammatikov, V.** (2020). Problems of deformation of professional legal consciousness in modern Russia (as exemplified in advocacy). *Amazonia Investiga*, 9(26), 254-262. Available from: <https://doi.org/10.34069/AI/2020.26.02.29> [in English].

7. **Kucherov, S.** (1956). The Legal Profession In Pre- and Post- Revolutionary Russia. *The American Journal of Comparative Law*. Volume 5, Issue 3, 443-470. Available from: <https://academic.oup.com/ajcl/article/5/3/443/2586691?searchresult=1> [in English].

8. **Nuna, M., Kodai, D.A. & Moonti, R.M.** (2020). Code of Ethics and the Role of Advocates in Providing Legal Aid to the Poor. *Indonesian Journal of Advocacy and Legal Services*. 1(2), 259-274. DOI: 10.15294/ijals.v1i2.35986 [in English].

9. **Paneyko, YU.** (2002). *Teoretychni osnovy samovryaduvannya [Theoretical foundations of self-government]*. L'viv: Litopys, 2002 [in Ukrainian].
10. **Pospelov, O.V.** (2012). *Formy advokatskikh obrazovaniy [Forms of lawyer formations]* (Extended abstract of Candidat's thesis). Moskva. [in Russian].
11. **Zaborovskyy V., Buletsa S., Bysaga Y. & Manzyuk Vasyl** (2020). Compliance of guarantees of professional activity of ukrainian advocate with international standards of profession of advocate. *The Lawer Quarterly*. Vol 10, No 2. Available from: <https://tlq.ilaw.cas.cz/index.php/tlq/article/view/404> [in English].
12. **Vilchuk, T.** (2018). Duties of a Lawyer to a Court and to a Client. *Russian Law Journal*. 6(4) [in English].
13. **Vil'chuk, T.B.** (2014). Realizatsiya pryntsyphu nezalezhnosti profesiynoyi diyal'nosti advokativ u vzayemynakh z derzhavnoyu vladoyu [Implementation of the principle of independence of the professional activity of lawyers in relations with the state authorities]. *Visnyk Akademiyi advokatury Ukrayiny*. T. 11, No 2 [in Ukrainian].
14. **Vil'chuk, T.B.** (2015). Systemy orhaniv advokat-s'koho samovryaduvannya v krayinakh Yevropeys'koho Soyuzu: Italiya, Nimechchyna, Frantsiya [Systems of self-governing bodies of lawyers in the countries of the European Union: Italy, Germany, France.]. *Pravo ta innovatsiyne suspil'stvo*. 2 (5). Available from: <http://apir.org.ua/wp-content/uploads/2015/12/Vilchuk.pdf> [in Ukrainian].
15. **Vinaver, M.** (1902). *Ocherki ob advokature [Essays on advocacy]*. S.-Pb.: Kn. skl. tip. M. M. Stasyulevicha [in Russian].
16. **Yartykh, I. S.** (2007). *Advokatura i grazhdanskoye obshchestvo: monografiya [Advocacy and civil society: monograph]*. Ul'yanovsk: Obl. tipografiya «Pechatnyy dvor» [in Russian].

## МОДЕЛІ ОРГАНІЗАЦІЇ ІНСТИТУТУ АДВОКАТУРИ В ЄВРОПЕЙСЬКОМУ СОЮЗІ ТА ЦЕНТРАЛЬНІЙ АЗІЇ: ПОРІВНЯЛЬНО-ПРАВОВЕ ДОСЛІДЖЕННЯ

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### Анотація

Дана стаття має на меті розкрити основні моделі впровадження інституту адвокатури в Європейському Союзі та Центральній Азії. Оскільки деякі країни-сусіди Європейського Союзу збираються розпочати

переговори про вступ до ЄС, вони прагнуть реформувати свої системи правосуддя, щоб привести їх у відповідність зі стандартами ЄС.

У статті подано порівняльно-правову характеристику моделей організації органів адвокатського самоврядування в країнах Європейського Союзу та Центральної Азії з точки зору відповідності міжнародним стандартам незалежності адвокатури. Авторами визначено типові порушення незалежності органів адвокатського самоврядування з боку виконавчих органів державної влади в країнах Центральної Азії, показано ступінь їхнього впливу на захист прав і свобод людини та сформульовано рекомендації щодо подолання існуючих порушень.

Виявом принципу незалежності адвокатури слід вважати адвокатське самоврядування. Оскільки визначення «незалежність» вживається у вузькому правовому сенсі, його слід розуміти виключно як відому міру юридичної свободи, вільного розсуду в діях у межах, окреслених законом. Стосовно адвокатури, термін «незалежність» слід тлумачити в контексті Рекомендацій Рес (2000) 21 Комітету міністрів державам-членам щодо свободи здійснення професії адвоката як «свободу професії від будь-які необґрунтовані обмеження, впливи, тиск, погрози чи втручання, прямі чи непрямі, з будь-якої сторони чи з будь-якої причини».

Під «незалежністю адвокатури» мається на увазі такий встановлений законом правовий статус органів адвокатської спільноти, який дозволяє їм самостійно та незалежно від неправомірного втручання вирішувати питання своєї внутрішньої організації, а також інші завдання, визначені в законі, тобто здійснювати самоврядування.

У теорії права дуже дискусійним є питання про найбільш прийнятні форми організації адвокатури. Проблемам організації та діяльності інституту адвокатури, в тому числі в країнах ЄС, присвячено чимало праць, зокрема такими вченими як: А. Бун, Н. Бакаянова, Т. Вільчик, Е. Вуллі, А. Деханов, С. Кучеров, А. Рагулін, Роджер Сміт, Рене Кассен, М. Кіку, М. Кузінс, Ф. Рейган, І. Яртіх та ін.

Проте спеціального порівняльно-правового дослідження, яке було б присвячене вивченню організації органів адвокатського самоврядування в країнах Європи та Центральної Азії, на даний час не проведено. Тому, виходячи з вищесказаного, ця тема статті видається актуальною та оригінальною.

Незважаючи на те, що адвокатська діяльність у сучасному світі здійснюється за принципом самоорганізації адвокатів та адвокатських спільнот, є кілька країн у світі, де адвокати повністю саморегулюються без будь-якого нагляду, керівництва чи обмежень з інших джерел, таких як виконавча, законодавча чи судова гілки влади. У теорії права питання про найбільш прийнятні форми організації адвокатури є досить дискусійним.

**Ключові слова:** Організація адвокатури, моделі адвокатського самоврядування, незалежність адвокатури, адвокатура Європейського Союзу, адвокатура країн Центральної Азії, гарантії адвокатської діяльності, міжнародні стандарти професії адвоката