

ADVOCACY AS A KEY INSTITUTION OF CIVIL SOCIETY: INDIVIDUAL AND SOCIAL DIMENSIONS OF LEGAL ASSISTANCE

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Annotation. The article analyzes the place and functions of advocacy as a key institution of a democratic state. The importance of advocacy in the context of ensuring legal protection, access to justice and implementation of the principles of the rule of law is investigated. The role of advocacy as an important element of the legal system and civil society is considered.

The transformation of the legal profession's functions from the basic provision of legal aid to an active participant in the formation of state legal policy, improvement of the legislative framework and development of legal culture is being monitored. The dualistic nature of advocacy, which has both individual and social significance, is emphasized.

The importance of advocacy as a tool of public control in the sphere of justice, its contribution to ensuring a fair trial and strengthening the rule of law is highlighted. The correlation between the development of the legal profession and the level of democratization of society, compliance with the rule of law and protection of human rights is analyzed.

The status of the right to professional legal assistance as a basic human right that ensures the realization of other rights and legitimate interests is substantiated. Emphasis is placed on the importance of developing effective mechanisms for the legal protection of citizens with the participation of the legal profession.

The impact of European integration on the modernization of the legal profession in Ukraine and the need to harmonize it with European standards are considered. Modern problems and prospects for the development of the legal profession in the process of building the legal state are analyzed.

The defining role of advocacy in harmonizing the interests of the individual, society and the state, its significance for democratic development and the establishment of the rule of law is summarized. The need for further modernization of the institute of advocacy in accordance with modern challenges is emphasized.

Key words: advocacy, rule of law, human rights, justice, rule of law.

1. Statement of the problem.

The Institute of Advocacy is an integral part of the legal system and civil society in a modern democratic state. It plays a key role in ensuring the right to protection, access to justice and implementation of the rule of law. In the conditions of the development of the rule of law and the European integration processes in Ukraine, the issue of the effective functioning of the bar becomes particularly relevant.

The advocacy as an independent professional human rights institution is designed to promote the protection of human rights and freedoms, to represent the interests of individuals and legal entities in their relations with the state. At the same time, it is an important element of the justice system, ensuring proper representation of the parties in the legal process and contributing to the establishment of the truth in the case.

In modern conditions, the role of advocacy goes beyond the simple provision of legal assistance. Lawyers actively participate in the formation of the legal policy of the state, improvement of legislation, improvement of the legal culture of society. Therefore, the study of the place and role of the institution of advocacy in a democratic state is important for understanding the prospects for the development of the legal system and mechanisms for the protection of human rights.

2. The purpose of the research is a comprehensive analysis of the role and place of the advocacy institute in a modern democratic state, determination of the main functions of advocacy and its influence on the formation of the rule of law, as well as identification of problems and prospects for the development of advocacy in the context of ensuring the rights and freedoms of man and citizen.

3. The state of development of research problems.

The question of the role and place of the legal profession in a democratic state has been studied by many domestic and foreign scientists. Among Ukrainian scientists, T. Varfolomeeva, S. Honcharenko, A. Ivantsova, V. Zaborovskyi, S. Ivanytskyi, and N. Bakayanova, who studied the historical development, legal status and functions of the legal profession in Ukraine, made a significant contribution to the development of this issue.

Separate theoretical aspects of the functioning of the advocacy institute in a democratic society were considered in their works by O. Yanovska, O. Svyatocki, L. Tatsy, and S. Fursa. M. Arakelyan, T. Vilchuk, I. Hlovatsky investigated the issue of interaction between the legal profession and state authorities and its role in ensuring human rights.

Among foreign researchers, it is worth noting the works of L. Friedman, R. Mullerath, and M. Mollen, who considered the role of advocacy in the context of the development of civil society and the rule of law. Research by experts of the Council of Europe and the International Bar Association are important for understanding the international standards of advocacy.

The analysis of scientific sources shows the multifaceted nature of the problem and the need for further study of the role of the legal profession in the conditions of modern challenges to democracy and the rule of law.

4. Presentation of the main material.

The realization of the rights and freedoms of citizens becomes a reality not only due to their direct use, but also due to comprehensive support from the state. This support includes the provision of the necessary material, social and spiritual resources, as well as an effective system of protection and protection of these rights and freedoms by the relevant state authorities. Thus, the transformation of potential opportunities into reality occurs through the synergy of the active position of citizens and comprehensive support of the state in creating conditions for the full exercise of these rights and freedoms [25, p. 41].

The stability and effectiveness of the system of protection of human and citizen rights and freedoms is based on a complex of scientifically based and practically tested principles. The viability and progressive nature of this concept is ensured through a harmonious combination of legal norms with moral, traditional and other social regulatory mechanisms. Such a comprehensive approach prevents the dominance of negative legal phenomena in the legal system, and also prevents the spread of legal nihilism and indifference to legal issues. The integration of various social norms into the concept of protection of rights and freedoms creates a solid foundation for the development of legal culture and strengthening of legal awareness in society [1, p. 816].

The constitutional consolidation of the state's duty to protect the rights and freedoms of man and citizen is a key indicator of the democratic development of the state. This duty is implemented through



the activities of all branches of government, ensuring a comprehensive approach to human rights protection. The protection of constitutional rights and freedoms from illegal actions and violations acts as an additional stage in the process of their implementation, which is activated in response to specific legal facts. Scientists consider this protection as a specific function of the state. In order to achieve maximum efficiency and meet the human rights needs of citizens, this function requires a systematic approach and a separate institutional design. Only under the condition of creating a complete and independent system of human rights protection can we expect significant progress in ensuring rights and freedoms and increasing the trust of citizens in the human rights mechanisms of the state [6, p. 23].

Transformations in the political and economic spheres of our state led to a rethinking of established social concepts and guidelines. Measures aimed at reducing the social obligations of society and the state cause mixed reactions among the population and may have negative consequences. This situation indicates the deep-rooted institutional nature of social problems, the solution of which requires a comprehensive approach, rather than individual measures to resolve social conflicts. In this context, human rights act as a tool for achieving one of the key goals - ensuring the sustainable development of the modern world. It is worth noting that the actual scope of individual rights and freedoms is always the result of a certain social compromise. It reflects the balance of the interests of various social groups and the capabilities of the state, achieved in specific historical and socio-economic conditions. Thus, the realization of human rights is a dynamic process that requires constant dialogue and the search for optimal solutions in a changing social environment [26, p. 33-34].

It should be noted that in the scientific legal community there are different views on the implementation of established standards in the field of human rights. One group of researchers believes that the possibility of realizing these rights directly depends on the level of socio-economic development of the state. Instead, other scientists insist that human rights and freedoms, enshrined in universally recognized international norms, must be guaranteed to every citizen through the constitution and national legislation, regardless of the country's economic status [2, p. 1798].

It is also worth noting that the importance of a person's constitutional rights is determined not only by their formal consolidation, but also by the state's ability to ensure their implementation and protection. This is a key aspect that determines the real value of fundamental rights and serves as an indicator of the development of a social and legal state. To effectively ensure the constitutional rights of citizens, the state creates an extensive system of institutions, including law enforcement agencies, judicial institutions, and other specialized organizations. This institutional structure is designed to guarantee the practical implementation of declared rights and freedoms, ensuring their protection and restoration in case of violation [3, p. 1470].

The development of the concept of the legal status of a person, initiated in the US Declaration of Independence and the French Declaration of the Rights of Man and Citizen in the 18th century, led to the fact that the institution of rights and freedoms became a key element of constitutional law and the basis of the constitutional system. Today, there is often a debate about the relevance of the issue of human rights in the conditions of an established democracy, especially when democracy is equated with the rule of the majority. However, historical experience shows that majority rule can be extremely harsh on individuals or minorities. A vivid example of this is the fate of Socrates, who was condemned to death by the majority. This case calls into question the perfection of the political system of Athens at that time and reminds us that democracy is not only the will of the majority, but also the protection of the rights of each individual. Thus, the issue of human rights remains relevant even in developed democratic societies, as it serves as a safeguard against possible abuses by the majority and ensures a balance of interests of all members of society [21, c. 46].

Studying the multifaceted aspects of human rights and freedoms is a complex and complex task. The ancient philosophical thesis of Protagoras "man is the measure of all things" in the process of historical development was transformed into the modern concept of "human dimension". This term was introduced by the participants of the Conference on Security and Cooperation in Europe (CSCE), which was later transformed into the Organization for Security and Cooperation in Europe (OSCE). It covers a wide range of issues related to human rights relations. The concept of "human dimension" reflects the evolution of the understanding of the central role of man in society and the state. She

emphasizes that the rights and freedoms of the individual should be a key criterion for evaluating the effectiveness of social, political and legal institutions. Thus, the ancient philosophical idea found its practical embodiment in modern international relations and human rights activities [9].

Recognizing a person as a central element of society requires the creation of effective mechanisms to protect his status. In our opinion, a comprehensive solution to this task consists in considering the constitutional system of protection of human and citizen rights and freedoms as a separate, independent institution. In constitutional science, the theory of human rights and freedoms has been developed quite deeply and consistently. Scientific research in this field, which includes the systematization of knowledge about the nature and essence of human rights, the principles of determining legal status and the classification of rights, creates the basis for the improvement of human rights mechanisms. These theoretical developments stimulate the search for adequate and accessible procedures for the realization of human rights. The goal of these efforts is to ensure that every person has the opportunity to feel, according to the constitutional definition, "the highest social value". Thus, theoretical developments in the field of human rights have a direct impact on the practical implementation of constitutional guarantees and the development of human rights mechanisms [8, p. 5].

The activity of a lawyer in the protection of human and citizen rights has a double meaning - individual and social. At the personal level, a lawyer provides the necessary legal assistance to a specific person, ensuring the realization of his rights and legitimate interests. In a broader context, this activity contributes to the strengthening of legality and the elimination of offenses in society as a whole. The wrongful conviction of an innocent person or the refusal to satisfy a well-founded claim has negative consequences not only for the direct participants in the legal process. Such miscarriages of justice undermine the foundations of justice and harm the entire society, which is interested in maintaining law and order. Thus, the role of a lawyer goes beyond representing the interests of an individual client. By ensuring a fair trial and preventing judicial errors, lawyers become important guarantors of law and order, contributing to the formation of trust in the legal system and strengthening the rule of law in society [25, p. 45].

The protection of human and citizen rights should not be opposed to the interests and tasks of the state or its bodies. The activity of a lawyer is complex. Defending the rights and legitimate interests of an individual, a lawyer simultaneously acts in the interests of society and the state, contributing to the strengthening of legality. Such a dual role of a lawyer is not conflicting, but complementary. When the defense counsel helps the defendant to exercise his procedural rights, he thereby contributes to a comprehensive and objective consideration of the case. This, in turn, increases the likelihood of a legal, well-founded and fair verdict. Thus, advocacy serves not only the interests of a specific client, but also the general interests of justice and the rule of law in the state [6].

As part of their professional duty to protect the rights and interests of clients, lawyers play a key role in ensuring fair justice. As active participants in the law enforcement process and an integral part of the justice system, lawyers perform an important public control function in this area. This position is supported by international documents regulating the activities of the bar. In particular, the Charter of Fundamental Principles of the Activities of European Lawyers of the CIS defines a lawyer as an irreplaceable participant in a fair judicial process. According to this document, the lawyer's role goes beyond simply protecting the client's interests. A lawyer also performs broader social functions, which include: prevention and prevention of conflicts, ensuring effective resolution of conflicts, promoting the development of legislation, protecting the fundamental principles of freedom, justice and the rule of law. Thus, advocacy is not only a tool for protecting the rights of individuals, but also an important institution that contributes to the development of the legal system and the strengthening of democratic values in society [24].

A lawyer plays a key role in ensuring legality and fairness in the provision of legal aid. The activity of the bar is regulated by public legal norms, which determine the response to detected offenses, interaction with clients and the resolution of procedural issues. The effectiveness of advocacy directly depends on the level of democracy, compliance with the law and human rights in society. Respect for individual freedom, honor and dignity of a person are fundamental prerequisites for the successful work of a lawyer. The status of a lawyer and the effectiveness of his work are closely

related to a person's position in society and the state, as well as to the observance of basic democratic principles. The rule of law is characterized by functioning within the framework of a developed civil society, where legal means effectively ensure the protection of the basic rights and freedoms of a person and a citizen. The fundamental principles of such a state are: rule of law; separation of powers; the reality of ensuring human rights and freedoms; legality; high level of legal culture of citizens. These principles create an environment in which the legal profession can effectively fulfill its role as a defender of rights and freedoms, contributing to the strengthening of the rule of law and the development of a democratic society [1].

The current state and practice of the functioning of the state and law often demonstrate a discrepancy between the declared principles and reality. In fact, the opinion of the people does not always play a decisive role in public administration, as it should be in a true democracy. Statements by statesmen about the complete transformation of our state into a legal and democratic state often turn out to be just rhetoric, which does not have a solid foundation. A detailed analysis of the practical implementation of constitutional rights and freedoms reveals a significant gap between the declarative principles enshrined in the Basic Law and actual reality. This discrepancy between the declared ideals and their implementation indicates the need for further development of the legal system and democratic institutions. It also emphasizes the importance of the active participation of civil society in the processes of state formation and control over the activities of power structures to ensure real, not declarative, observance of the constitutional rights and freedoms of citizens [13, p. 257].

Recognition, observance and protection of human and citizen rights and freedoms is a fundamental duty of the state. The constitutional principles on which the legal and democratic state is based have a clear goal - to prevent arbitrariness and lawlessness against a person, including by the state itself. These principles derive from the key function of law - to be the bearer and guarantor of human freedom in optimal and rational forms. A fair law, based on unwavering observance of laws, is able to maximally express, consolidate and guarantee the reality of individual freedom and the rights of every person in society. Thus, the legal system must not only declare, but also effectively ensure rights and freedoms in accordance with the high standards of modern civilization. This involves the creation of effective mechanisms for the realization and protection of rights, as well as the formation of a legal culture where respect for human rights becomes an integral part of public consciousness. Only under such conditions can we talk about the true implementation of the principles of the rule of law and the real guarantee of the freedom of every member of society.

The leading role of modern, fair law in society and the state involves the preservation and strengthening of key legal values, including all the achievements of humanity in the sphere of guarantees of individual rights and freedoms. It also includes legal mechanisms that ensure the realization of legal ideals. Such an approach requires the recognition and practical application of sound legal principles that embody these legal ideals and values. Among these ideals, the criteria of justice and legality occupy a special place. In the modern civilizational context, human rights and freedoms become the pinnacle of legal reality, being directly integrated into positive law. They remain fundamental guidelines for current legislation, forming the basis of the state's legal policy. These principles are intended to guide law-making activities, efforts to implement human rights in the entire complex of legal norms, legal procedures and orders. They also serve as a criterion for the interpretation of law and play a key role in the formation of legal awareness. The importance of these principles lies in their impact on the general attitude to law on the part of all subjects of social relations, especially citizens, officials and the state as a whole. Thus, they create the basis for the development of legal culture and strengthening the rule of law in society [2, p. 1780].

The transformation of the socio-economic and political-legal conditions of the functioning of the law enforcement system of Ukraine, as well as its European integration course, lead to an urgent need for comprehensive reform of law enforcement agencies. This reform aims not only to reduce staff, as was practiced in Soviet times, but to systematically optimize the structure, functions, tasks and resource provision of law enforcement agencies. According to S. Rossokha, the key in this process is a systemic and functional approach, which involves improving the activities of law enforcement officers through the optimization of their tasks, structure, number, as well as improving financial,

logistical, organizational, legal and personnel support, which will allow adapting the system to modern social needs and state capabilities [21, c. 46].

Advocacy is a key element of the justice system, without which the effective functioning of the judiciary is impossible. Its main mission is to provide legal assistance to a wide range of people. As T. Vilchik notes, the professional activity of lawyers must meet high ethical standards. The role of lawyers is not limited to protecting the interests of clients. They also play an important role in ensuring the justice of the judiciary. As active participants in the law enforcement process, lawyers occupy a special place in the mechanism of justice, performing the function of public control. Such a dual role of the legal profession - protecting the rights of individuals and promoting fair justice in general - emphasizes its importance in a democratic society. The legal profession acts not only as a tool for the protection of rights, but also as an institution that contributes to maintaining the balance in the justice system and strengthening the rule of law. [5, c. 5]. This thesis of the scientist is also confirmed by international documents regulating the field of activity of the Institute of Advocacy. Thus, in particular, the Charter of Fundamental Principles of the Activities of European Lawyers of the CIS defines the role of a lawyer as an irreplaceable participant in a fair judicial process, who not only sincerely serves the interests and protects the rights of his client, but also performs such functions in society, which are expressed in the prevention and prevention of conflicts, in ensuring the resolution of conflicts ... in the further development of the law, as well as in the protection of freedom, justice and the rule of law" [24].

Advocacy, aimed at protecting citizens from violations of the law, rather than opposing it, plays a key role in strengthening legality and increasing public trust in the legal system. Defending the rights of individuals, lawyers simultaneously contribute to the establishment of the rule of law and the development of the rule of law. This opinion is supported by many scientists, in particular S. Prylutskyi, who emphasizes that the principled position of each lawyer in specific cases forms the basis for the independent position of the entire lawyer community regarding the state of legality in the state. Such a collective position, based on the individual experience and principles of lawyers, is an important factor in the assessment and maintenance of law and order in the country, strengthening the role of the legal profession as a key element in ensuring justice and legality [19, c. 5].

The advocacy, as an independent professional legal institution, plays a key role not only in the mechanism of judicial protection of rights and freedoms, but also in ensuring the constitutional rights of citizens in all spheres of life. It is an important element in the justice system, contributing to the resolution of social conflicts and ensuring the effective functioning of the judiciary. V. Horodovenko emphasizes the need for social control over the fair application of laws and moral norms, as well as the creation of conditions for the independence of judges. In this context, the legal profession acts not only as a defender of the rights of individuals, but also as an important institution of civil society, which ensures the connection between the judicial system and society, contributes to increasing the transparency of judicial processes, and plays an important role in maintaining the balance between state power and the rights of individuals, thereby strengthening democratic principles and the rule of law in the state [7]. External control over court activities is carried out to one degree or another by interested persons, the public, and mass media.

The central problem of modernity remains the provision of effective legal protection of a person and a citizen. The idea of protecting human rights arose as a result of historical development and awareness of the need not only to declare individual rights, but also to create real conditions for their realization. The Universal Declaration of Human Rights, which remains a reference point for the development of legislation on a global scale, affirms the fundamental principles: recognition of the dignity of all members of the human community, the equality and inalienability of their rights as the basis of freedom, justice and peace. It declares that all men are born free and equal in dignity and rights, and that every person shall have all the rights and freedoms enshrined in the Declaration. These postulates are not just the result of a social compromise, but a reflection of universal values that must be implemented through effective legal mechanisms and guarantees in every state [10].

The right to qualified legal assistance is a fundamental human right that plays a key role in ensuring his life path and protecting other rights. This is a legally guaranteed opportunity for every person to receive professional support from legal professionals with specialized knowledge, skills and

experience. The essence of this right is that a person can seek help from competent lawyers who are able to effectively protect his interests, clarify complex legal issues and represent him in various legal situations. Such assistance is crucial to ensure equal access to justice, protection against possible abuses and realization of other constitutional rights and freedoms. Thus, the right to qualified legal assistance acts not only as a separate right, but also as a guarantee of the realization of the entire complex of rights and legitimate interests of a person, providing him with the opportunity to function effectively in the legal field and protect his interests in interaction with the state and other subjects of legal relations.

5. Conclusions.

Thus, on the basis of the above, the following conclusions can be drawn:

the institution of advocacy is an integral component of the legal system and civil society in a modern democratic state, playing a key role in ensuring the right to protection, access to justice and implementation of the principle of the rule of law;

the role of advocacy in modern society goes beyond the simple provision of legal assistance. Lawyers actively participate in the formation of the legal policy of the state, improvement of legislation and improvement of the legal culture of society;

advocacy activity has a double meaning - individual and social. At the personal level, a lawyer provides legal assistance to a specific person, and in a broader context contributes to the strengthening of legality and the elimination of offenses in society as a whole;

the effectiveness of advocacy directly depends on the level of democracy, compliance with the rule of law and human rights in society;

the bar performs an important function of public control in the sphere of justice, contributing to ensuring the justice of the judiciary and strengthening the rule of law;

the right to qualified legal assistance is a fundamental human right, which acts not only as a separate right, but also as a guarantee of the realization of the entire set of rights and legitimate interests of a person.

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