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Research Article

INTERNATIONAL LEGAL STANDARDS OF CONDUCT FOR THE LEGAL PROFESSION

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ABSTRACT

The article discusses the international legal standards of advocacy, which need to be analyzed by each State with the aim to bring national legislation into harmonization with international legal acts in order to build a democratic society that implements one of the most important goals - protecting the rights and legitimate interests of citizens.

KEYWORDS

Advocacy, international legal standards, deontological requirements, law-governed State.

INTRODUCTION

A democratic State of law cannot exist without a developed civil society.

One of the institutions of civil society is advocacy, which performs the main role of protecting human rights and their legitimate interests. At the same time, an advocate carries out his activities based on the rule of law, independence, and other democratic principles [1].

Based on these principles, the State, in its policy, should contribute to the improvement of the

institution of advocacy, avoiding any measures of control and restriction of its activities. This is due to the fact that the advocacy plays a key role in ensuring justice and protecting the rights and freedoms of citizens within the rule of law.

While building a State of law, one of the main factors contributing to the rise of the status of advocacy is the need to study international documents related to the main function of the legal profession - human rights, as well as the harmonization of local legislation with international legal standards. This, in turn, helps to

regulate advocacy, which aims at unifying the concept of "quality of legal services".

As Ansel M. notes, "Familiarity with norms and systems that are different from their own will allow a lawyer to better know the law of his country, because the specific features of this law are especially clearly identified in comparison with other systems. Comparison is capable of arming a lawyer with ideas and arguments that cannot be obtained even with a very good knowledge of own country's law» [2].

Similarly, Matmurotov A. concludes his work by stating that the development of international cooperation in the field of advocacy, and the introduction of the best practices of foreign countries are important for more reliable protection of human rights and interests in Uzbekistan [3].

Ragulin A. argues that even though the standards of advocacy in each State are based on the specifics of national legal proceedings, legislative framework, and the structure of public authorities, the rule of law States have common basic provisions that have relatively equal force in legislation [4]. These provisions, serving as the basis for the creation of rules for regulating legal practice, can be defined as the international standards for legal practice.

"Standards of professional activity of an advocate are the requirements for the quality of relevant, mainly procedural, actions provided for by international acts and current legislation, as well as methods gained during the advocate's working experience and practical methods for organizing the work of an advocate in general and in specific cases, allowing him to act most effectively" [5].

Riabtseva E. also determines that "international standards of legal practice are the requirements for the

qualifications of an advocate, as well as the quality requirements of legal assistance provided by international acts, allowing him to act most effectively" [6].

In international practice, there is no universal document that would regulate the rights and obligations, the status, and guarantees of the activities of advocacy in the international arena. Instead of a single document, international standards for advocacy are based on numerous conventions, regulations, and judicial practices, which establish the basic rules of legal activity.

The main international legal documents that are used to determine the standards of advocacy include: the United Nations Charter of 1945 [7], the Universal Declaration of Human Rights of 1948 [8], Standard Minimum Rules for the Treatment of Prisoners of 1955 [9], International Covenant on Civil and Political Rights of 1966 [10], the Recommendation No R (81) 7 of the Committee of Ministers to Member States on Measures Facilitating Access to Justice of 1981 [11], United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (the Beijing Rules) [12], Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988 [13], Code of Conduct for European Lawyers of 1988 [14], Basic Principles on the Role of Lawyers of 1990 [15], IBA Standards for the Independence of the Legal Profession of 1990 [16], Basic Principles on the Role of Lawyers of 1990 [17], Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms of 1995 [18], Resolution (76) 5 of the Committee of Ministers on Legal Aid in Civil, Commercial and Administrative Matters of 1996 [19], Recommendation of the Committee of Ministers to the member States on the Freedom of Exercise of the Profession of Lawyers of 2000 [20], Charter on the

Fundamental Principles of Advocate’s Activity of 2016 [21].

At the same time, international legal documents are predominantly advisory and are used in national legislation at the request of the State itself.

Kobets L. in his scientific work proposes to conditionally divide the international legal standards of advocacy into the following three main groups:

“Common sources are universal and regional international human rights treaties that regulate issues of protection and judicial proceedings. They can be mandatory or recommendatory for the States.

Special sources – international and regional documents on specific issues of legal status and organization of advocacy. They can be mandatory or recommendatory.

Special recommendatory sources – documents of international bar associations on the issues of advocacy formation and ethics. They have an exclusively recommendatory nature for the States. Whereas, for member bar associations, they are both recommendatory and mandatory”. [22]

Drawing upon the above-mentioned international legal norms, Ryabtseva E., in her scientific paper, presents the international standard of advocacy in providing legal services. Particularly, the author proposes “the following main characteristic features of international standards for the professional activity of an advocate:

1. The content of the standards is an ordered set of requirements consisting of two components:

- Requirements for the qualifications of an advocate. These requirements relate primarily to the level of education and work experience necessary for a person to acquire the status of an advocate. In addition,

personal characteristics such as the impossibility of combining the status of an advocate with the status of a judge, etc. are taken into account;

- Requirements for the quality of service. These requirements are related to the work performed by an advocate and must comply with both the general principles applicable to all types of legal services performed by an advocate and the individual branch duties of an advocate.

2. The standards of advocacy are enshrined in international legal acts. At the same time, these documents can be both general, related to various aspects of society, and special, related to certain types of public activities, in particular, in the field of legal services provided by advocates.

3. The legal regulation of the standards of advocacy aims to increase the level of efficiency in the provision of legal assistance in the field of protection of human rights and legitimate interests.” [6]

These features of the international standards of the professional activity of an advocate reveal a single mechanism of rules, principles, and requirements that regulate advocacy for the most reliable protection of the legitimate human rights and interests.

At the same time, the main deontological principles of the legal profession, which have already become international standards of advocacy, include independence, legitimacy, self-governance, observance of the moral principles of the legal profession, professional confidentiality, and incompatibility. A Code of deontological principles is presented in an international document – Code of Conduct for European Lawyers of 1988 (Code of Deontology) [14].

The principle of independence is determined by its inviolability, the impossibility of threatening an advocate or holding him accountable for providing legal assistance to a person within the law and taking a legal position in the case. It also presupposes the separation of the legal community from public authorities, the prohibition of the requirement to disclose advocate secrecy and responsibility for interference in the legal activities of an advocate.

The principle of legality means the duty of an advocate to be guided by domestic and international laws (if applicable in the country) when carrying out his activities.

The principle of self-government comes from the principle of independence. The State should not interfere with and manage the activities of the legal community. Advocates carry out their activities on the basis of a voluntary professional association of persons. The self-governing body is the Chamber of Lawyers.

The principle of compliance with the moral principles of the legal profession implies that an advocate must strictly follow the rules of professional ethics of an advocate, including not acting against the interests of his client and not violating moral principles, but also being qualified specialist and having impeccable behavior.

The basis of professional secrecy is the confidentiality of information and evidence received from his client, as without the presence of such obligation, there will not be any trust to the advocate. Mutual trust between an advocate and his client is an important aspect of legal practice. An advocate must hold the confidentiality of information received from his client, except in cases where this is contrary to law.

The principle of incompatibility implies a ban on holding certain positions and non-participation in commercial or other activities incompatible with the legal profession to ensure the true independence of an advocate.

In general, all deontological requirements that make up the international standards of professional activity of an advocate, as well as adopted international legal acts, are important tools for ensuring justice and protecting the rights and freedoms of citizens. They define the basic principles that should guide an advocate in his professional activities, such as independence, confidentiality, professionalism, and ethics.

The Constitution and national legislative acts of each State are the basis for the regulation of advocacy, whereas international legal documents on advocacy complement and clarify these principles at the international level. An important role is also played by international and regional organizations and bar associations that develop professional standards and codes of ethics.

International legal standards of advocacy play an important role in ensuring fair justice and protecting the rights and freedoms of citizens. They define the basic principles by which an advocate should be guided in his professional activities. Generally recognized international norms and documents, as well as codes of ethics and recommendations, contribute to the development of the legal profession and provide reliable protection of the rights and freedoms of citizens around the world.

As a result, any State striving to become democratic, recognizing the rule of law and protecting the rights, freedoms, and legitimate interests of citizens, must constantly conduct a comparative legal analysis of

international practice so that national legislation reflects modern challenges and trends related to human rights, technological innovations, and globalization. This is the only way to ensure the fair and efficient functioning of the legal profession in the State.

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