HUMANITIES AND NATURAL SCIENCES UNIVERSITY
IN SANDOMIERZ

supported by

CENTER
for Ukrainian and European
Scientific Cooperation

EUROPEAN VECTOR OF CONTEMPORARY JURISPRUDENCE: THE EXPERIENCE OF UKRAINE AND THE REPUBLIC OF POLAND

Volume 1

Collective monograph

The book is compiled by: Doktor nauk społecznych w zakresie pedagogiki Małgorzata Kiedrowska, Doktor nauk prawnych Adam Erechemla, Doktor nauk prawnych Tadeusz Branecki.

Sandomierz, Poland
2018

Recommended for publication
by the Academic Council of Humanities and Natural Sciences University
in Sandomierz

The authors of articles usually express their own opinion, which is not always comply with the Editorial Board's opinion. The content of the articles is the responsibility of their authors.

European vector of contemporary jurisprudence: the experience of Ukraine and the Republic of Poland: Collective monograph. Volume 1. Sandomierz: Izdevnieciba "Baltija Publishing", 2018. 520 p.

ISBN 978-9934-571-19-0

CONTENTS

INDEPENDENCE AND SELF-DEPENDENCE OF THE UKRAINIAN LAWYER IN THE ASPECT OF DETERMINING THE ABSOLUTENESS OR RELATIVITY OF THEIR LEGAL NATURE

Buletsa S. B., Zaborovsky V. V.,
Lenger Ya. I., Lazur Ya. V., Chepys O. I.

INTRODUCTION

Fixing in Article 59 of the Constitution of Ukraine the right of every person to legal assistance, the state assigns such as a duty to the bar, namely a lawyer who must ensure the proper exercise of this right on a professional basis. The relevance of the topic is that the implementation of this inalienable human right is impossible without the provision of proper conditions for the implementation of advocacy, the main of which are the independence and independence of the lawyer. This state of affairs is due to the fact that the provision of legal assistance at the proper level is impossible if there is any influence on the professional activities of the lawyer and the lack of opportunity freely and at its discretion, including to determine the means and methods of providing such assistance to its client. The relevance of the topic of research depends also on the fact, that among scholars there is no common point of view regarding the perception of the categories "independence of a lawyer" and "self-dependence of a lawyer" as absolute or relative.

The problem of determining the essence of independence and self-dependence of the lawyer, particular in terms of clarifying the absoluteness or relativity of their legal nature, was the subject of research by a number of scholars. Among scientists who have studied certain aspects of this problem, it is worth to mention the works of A. Boikov, T. Vylchyk, S. Kalyniuk, K. Koval, P. Korotkov, M. Kosariev, V. Nor, M. Pohoretskyi, W. Teiler, I. Trunov, D. Fiolevskyi, N. Shulhach, A. Yanovska and others.

The purpose of this article is to reveal the nature of the independence and self-dependence of the lawyer through the prism of clarifying the absoluteness or relativity of its legal nature. The main tasks of the author are: to analyze both the normative consolidation and the positions of scientists, which reflect the essence of independence and self-dependence of advocacy; to reveal the etymological origin of the words "independence" and "self-dependence"; to make a distinction between such properties of the legal status of a lawyer; and on the basis of the conducted research to clarify the absoluteness or relativity of the categories "independence of the lawyer" and "self-dependence of the lawyer".

Exposition of the main material

In one of our previous works[1], revealing the essence of independence and self-dependence of the lawyer as the main conditions for the provision of professional legal assistance, we came to the conclusion that the independence of a lawyer should be regarded as its independence at the external and internal levels. If the independence of a lawyer at an external level is primarily associated with the prohibition of any interference and obstacles in the performance of his professional activities, then at the internal level it must be perceived, in particular, as a set of moral, ethical and psychological qualities that reflect the attitude of the lawyer to his legal practice, subject to the absence of any pro-pretentious (in particular, personal) interest in the process of its implementation. Besides, we paid attention to the fact that independence of the legal status of a lawyer, unlike self-dependence, should be considered as an advocate's freedom, at his own discretion, on the basis of his internal conviction and within his powers to provide professional legal assistance to his client. If the independence of the lawyer concerns all aspects of his activity (he is considered as the main principle of the practice of advocacy), then self-dependence is primarily associated with its procedural activity, and is in the perception of the lawyer as an independent participant in the process, which, within the limits of his powers, freely determines the means and methods of rendering legal assistance to their client and is responsible, in particular, for the illegal acts he has committed.

Having analyzed the question of the external and internal level of the independence of the lawyer, as well as the essence of the self-dependence of the lawyer, one should pay attention to the ambiguity of the positions of scientists in understanding the absoluteness or relativity of the perception of the nature of independence and independence, including in the activity of the lawyer. So, N. Shulhach, examining the essence of the principle of independence of judges, observes that "independence can be complete, but a certain boundary is usually established, to which one can be independent, or a range of subjects having the right (having no right) to exercise external influence"[2]. From similar positions the scientists who directly analyze the legal position of the lawyer come out. In particular, T. Vilchyk proceeds

[1] Заборовський В. Незалежність та самостійність адвоката: проблеми розмежування. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2017. Вип. 42. С. 242–246.

[2] Шульгач Н. Поняття та сутність принципу незалежності суддів. *Наукові записки Львівського університету бізнесу та права*. 2001. Вип. 6. С. 228.

from the fact that the independence of a lawyer "can be limited only in the interests of effective the performance of a professional duty by an attorney and in the interests of justice within the limits arising from the principles of professional ethics and procedural law". As a category that is not absolute, limited by law, the procedural framework within which it exercises its procedural powers and is legitimate only in the performance of procedural activities by a lawyer, the principle of independence of the legal profession is also considered by S. Kalyniuk[3].

In our opinion, the shortcomings of such positions are that these scientists do not make the proper distinction between the concepts of "independence of the lawyer" and "independence of the lawyer", and this not only indicates the need to differentiate them, but also to determine our attitude to absoluteness or relativity in their perception. Etymological research of the definition of the concept of "independent" indicates that it is considered, in particular as: 1) one that is not under any authority, in someone's submission; is not connected in any circumstances; is not connected with anything, separated from anything; 2) one that does not depend on anyone, anything[4]; 3) does not obey someone[5]. It should be noted that in each of these cases, one of the variants of the concept of "independent" is its perception and as a self-dependent (inclined to self-dependence, expressing self-dependence, determination in behavior, in actions, etc.). In turn, the disclosure of the concept of "self-dependent" occurs either through complete identification with the concept of "independent", or because of the use of its features to reflect the essence of the latter, indicating, in particular, that self-dependence is characteristic of an independent person. All this points to a significant etymological synonymy of these concepts, but in our opinion, in the legal sense, in particular as regards the characteristics of the legal position of the lawyer; these concepts must have different meanings and should be clearly delineated.

First of all, one should pay attention to the fact that, along with the already mentioned variants of the concept of "independent", they are also used, according to which it is understood as: it is capable of acting

[3] Вільчик Т. Реалізація принципу незалежності професійної діяльності адвокатів у взаєминах з державною владою. *Вісник Академії адвокатури України*. 2014. Т. 11. № 2. С. 70. URL: http://nbuv.gov.ua/UJRN/vaau_2014_11_2_10 (дата звернення: 25.08.2017).

[4] Калинюк С. Інститут адвокатури в механізмі реалізації права людини і громадянина на правову допомогу: конституційно-правовий аспект: дис. … канд. юрид. наук: 12.00.02. Ужгород, 2015. С. 163.

[5] Современный толковый словарь русского языка: более 90 000 слов и фразеологических выражений / под ред. С. Кузнецова. СПб.: Норинт, 2001. С. 622.

independently, without outside help or guidance; or as such, which is carried out on its own or on its own initiative. Important in the delineation of the above concepts are scientists who, on the basis of the above understanding of the concept of "independence", examine the legal status of judges and investigators in criminal proceedings. Thus, A. Mykhailenko, pointing at the need to distinguish independence from self-dependence, notes that if independence means the exercise of one's powers, procedural activity without any illegal influence, as well as not accountability to anyone, then independence requires free participation in the study of the evaluation of evidence, discussion and decision in accordance with the law and their own convictions[6]. The position of V. Nor and S. Belostotskyi also deserves attention who, under the self-dependence of the judge, in particular, understand his activities, that "he is based solely on the law, according to conscience and his inner will, is manifested through his impartiality to the participants in the process"[7].

The point of view of A. Vartanov, who examines the essence of the procedural independence of the investigator, considers it, in particular as a right, at its discretion, based on a free assessment of evidence, to take decisions and carry out actions to establish the events of the crime and the circumstances of its commission, initiate criminal proceedings, etc.[8] A similar position holds D. Volkov, who considers the procedural independence of the investigator as his legal position, that "he independently, on his own initiative, on the basis of internal conviction, analysis of available information and in accordance with the criminal procedure law, makes all decisions about the direction of investigation and the conduct of investigative actions, except for cases when the law provides for the receipt of the sanction of the prosecutor or the consent of the court"[9].

[6] Розанова В. Краткий толковый словарь русского языка. 7-е изд. М.: Русский язык, 1990. С. 108.

[7] Великий тлумачний словник сучасної української мови / уклад. і гол. ред. В. Бусел. К.; Ірпінь: ВТФ «Перун», 2005. С. 760.

Словник української мови: в 11 т. / за ред. І. Білодіда. К.: Наукова думка, 1974. Т. 5: Н – О. С. 308.

[8] Великий тлумачний словник сучасної української мови / уклад. і гол. ред. В. Бусел. К.; Ірпінь: ВТФ «Перун», 2005. С. 1291.

Словник української мови: в 11 т. / за ред. І. Білодіда. К.: Наукова думка, 1978. Т. 9: С. С. 46.

[9] Михайленко О. Про забезпечення незалежності суддів у примусовому кримінальному процесі. *Етичні та правові проблеми забезпечення незалежності суддів: матеріали міжнародного науково-практичного семінару* (Харків, 30–31 березня 2005 р.). Х.; К.: ЦНТ «Гопак», 2006. С. 51–52.

Analysis of the above-mentioned positions of scientists firstly demonstrates a clear delineation of the concepts of "self-dependence" and "independence" of the person (judge, investigator), and, secondly, indicates to us the perception of self-dependence as the possibility of such persons freely, at their discretion on the basis of internal belief, to exercise the powers granted by law. It should be noted that the independence of the person, scientists in the overwhelming majority of cases, is associated precisely with the process of fulfilling the powers given to him, and therefore is considered primarily in the aspect of the procedural self-dependence of a person.

As for absoluteness or relativity in the understanding of the essence of the concepts "independence of the lawyer" and "self-dependence of the lawyer", in our opinion, the independence of the lawyer should be perceived as absolute. We share the position of K. Koval, who proceeds from the premise that independence refers to such concepts that can not be regarded as partial, independence, like freedom, is exceptionally absolute[10]. But the correct one in this case is the statement of A. Boykov, who notes: "The independence of any state or public institution can not be unlimited. Complete independence, like unlimited freedom, is impossible not only in an organized society, but also in the world of living nature. When it comes to complex multifunctional systems – and the bar is this – it's incorrect to talk about their independence in general"[11]. Therefore, the independence of the legal profession should be perceived precisely as independence from any external influence (in particular, from the state), while the independence of the lawyer – as a principle of carrying out advocacy activities – is disclosed primarily through the guarantees of such activities. However, both the independence of the bar (from outside influence) and directly, the independence of the lawyer (both at the external and internal levels) should be considered as absolute categories.

Some scholars, considering the essence of the independence of the bar, point out that it is actually limited only by law. In particular, S. Kaliniuk proceeds from the premise that "the independence of a lawyer in the exercise of his powers necessarily presupposes their submission to the law

[10] Нор В., Білостоцький С. Захист незалежності судів і самостійності суддів у діяльності Національної Ради Судівництва Республіки Польща: досвід для України. *Вісник Львівського університету. Серія «Юридична»*. 2015. Вип. 61. С. 444.

[11] Вартанов А. Проблемы процессуальной самостоятельности следователя по Уголовно-процессуальному кодексу Российской Федерации: дисс. … канд. юрид. наук: 12.00.09. Краснодар, 2012. С. 7.

only, otherwise it can lead to lawlessness and arbitrariness"[12]. A similar point of view is shared by M. Vasilevich, who, in turn, judges independence in their independence, and not in connection with the administration of justice by any circumstances and other, except for the law, freedom[13]. In our opinion, it is impractical to point out that independence is limited by the law. In this case, it is necessary to proceed from the fact that it is the law that determines the essence of the independence of a particular entity and establishes the mechanism for its provision. Therefore, we believe that the position of those scientists who, firstly declare, that "in no case it is impossible to talk about the independence of the legal profession from the requirements of the law, is more successful"[14], and secondly, the principle of independence is considered as such that it "excludes any outside legal restrictions with regard to a lawyer in the discharge of his obligations to provide legal assistance to the latter"[15].

All this indicates that the law does not limit, but rather determines the essence of the independence of the legal profession and establishes a mechanism for its provision. And this confirms our position on the absolute character of both the independence of the bar (relative to external influence) and the independence of the lawyer in particular (at the external and internal levels). At the same time, all the guarantees of the professional activity of the lawyer are provided only if it is carried out in accordance with the law and the rules of legal ethics (some guarantees are not applied in the case of a lawyer committing an offense). In our opinion, the Ukrainian legislator proceeds from the absolute independence of both the legal profession and the lawyer in particular. To this conclusion, we are driven by the norms of Article 5 of the Law of Ukraine "On the Bar and Advocacy"[16], and above all

[12] Волков Д. К вопросу о процессуальной самостоятельности следователя. *Известия Российского государственного педагогического университета имени А.И. Герцена: аспирантские тетради*. 2007. № 11(32). С. 63.

[13] Коваль К. Питання реалізації принципу незалежності адвокатури в процесі забезпечення державою права на безоплатну вторинну правову допомогу. *Конституційно-правовий аспект розвитку правової системи України: четверті юридичні читання: матеріали міжнародної науково-практичної конференції* (Одеса, 25 жовтня 2013 р.). О.: Астропринт, 2013. С. 83.

[14] Бойков А. Независимость адвокатуры. *Ученые труды Российской Академии адвокатуры*. 2007. № 1. С. 15.

[15] Калинюк С. Незалежність адвокатури як основна гарантія її діяльності: окремі термінологічні питання. *Порівняльно-аналітичне право*. 2015. № 5. С. 320. URL: http://www.pap.in.ua/5_2015/96.pdf (дата звернення: 25.08.2017).

[16] Василевич М. Конституційно-правові гарантії незалежності судової влади: теорія та практика реалізації: автореф. дис. … канд. юрид. наук: 12.00.02. К., 2010. С. 8.

Article 23 (guarantees of advocacy) of the same Law. As in the first, and in the second case (in particular, regarding the operation of the guarantee to prohibit any interference and obstacles in the practice of advocacy), the legislator does not establish any restrictions on either the independence of the bar or the independence of advocacy directly.

The same position takes place in international acts defining the basic principles of the implementation of advocacy. In particular, in the analyzed clause 2.1.1 of the General Code of Rights for Lawyers of the Countries of the European Community[17] it is pointed out that in the process of a lawyer's professional activity, absolute independence and the absence of any influence on a lawyer, primarily connected with his personal interest or with external pressure, are absolutely necessary. The Standards for the Independence of the Legal Profession of the International Bar Association (adopted at the IBA conference on September 7, 1990 in New York) indicate that it is absolutely necessary for the construction and functioning of a law-based state to have an equitable justice system that guarantees the independence of lawyers in the performance of professional duties. It is noted that attorneys must always act freely, honestly and fearlessly in the performance of their duties, in accordance with the legitimate interests of the client and without any interference or pressure from the authorities or the public (paragraph 6 of the Standards)[18]. Out of the necessity for absolute independence of the professional activity of the lawyer, legislators of foreign countries also go out. In particular, paragraph 2.8 of the Code of Conduct for Barristers of Ireland[19] provides that most of the duties, which must be adhered to by barristers require their absolute independence, freedom from any influence, especially from the impact that may arise from their personal interest or external pressure. The duty of the lawyer to preserve in its practical activities absolute independence is indicated by the Danish legislator (paragraph 2.1.1 of the Code of Conduct for Danish lawyers and the Danish legal society[20].

[17] Погорецький М., Яновська О. Адвокатура України: підручник. К.: Юрінком Інтер, 2014. С. 67.

[18] Фіолевський Д., Айгістова Д. Адвокатура незалежної України. *Вісник Донецького національного університету. Серія В «Економіка і право»*. 2009. № 2. С. 160.

[19] Про адвокатуру та адвокатську діяльність: Закон України від 5 липня 2012 р. № 5076-VI / Верховна Рада України. *Офіційний вісник України*. 2012. № 62. С. 17. Ст. 34.

[20] Загальний кодекс правил для адвокатів країн Європейського Співтовариства: міжнародний документ від 1 жовтня 1988 р. / ЄЕС. URL: http://zakon2.rada.gov.ua/laws/show/994_343 (дата звернення: 25.08.2017).

R. Mullerata also views independence as a characteristic aspect of lawyers' activities. Proceeding from the fact that independence is the quintessence of the advocate's activity, he considers absolute independence through the prism of his duty to be independent physically, spiritually and materially. An important element of the provision of qualified legal assistance, the absolute independence of the legal profession from the state is also considered by A. Belohlavyk[21]. But it should also be tak n into account that, as M. Kosarev: "The freedom of the legal profession from the guardianship of state bodies in the United States and Western Europe is to some extent relative, since the state organs of executive and judicial power of the leading Western democracies have, as a rule, considerable powers to control the formation of lawyer corporations, their disciplinary and Often fee-based practice"[22]. Examples of such "state trusteeship" in the UK, Germany, Italy and the US in his work leads T. Vilchik[23]. In our opinion, such exceptions are possible only in countries where the society is already perceived as civil, and the state is regarded as legal. Proceeding from the fact that the Ukrainian state is at the stage of formation of civil society and the rule of law, in our opinion, the independence of the bar and the independence of the lawyer (in the process of carrying out his professional activities) should be considered exclusively as absolute categories.

If the independence of a lawyer is perceived by us as an absolute category, then in his opinion, its self-dependence is not such. As we have already noted, the self-dependence of the lawyer is directly related to the fulfillment of the powers given to him and, above all, is associated with his procedural activities. Investigating the legal status of an attorney in the conditions of the implementation of the procedural form of his activities, we adhere to the position according to which the procedural independence of

[21] Standards for the independence of the legal profession, adopted by the IBA on 7 September 1990 in New York. URL: http://www.ibanet.org/Publications/publications (date of access: 25.08.2017).

[22] The Code of Conduct of the Bar of Ireland, adopted by a General Meeting of the Bar of Ireland on 25th July 2016. URL: https://www.lawlibrary.ie/About-Us/What-We-Do/Regulation/Code-of-Conduct.aspx (date of access: 25.08.2017).

[23] Code of Conduct for the Danish Bar and Law Society, applied by the General Council of the Danish Bar and Law Society as of 1 October 2011. URL: http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Denmark_Code_of_Conduct_for_the_Danish_Bar_and_Law_Society.pdf (date of access: 25.08.2017).

the lawyer is relative[24]. This is due to the fact that on the one hand, the lawyer is entitled to choose methods and means of rendering assistance to his client, and on the other – such methods and means should be based on the provisions of law. Besides, the lawyer must take into account the principle of the dominance of the client's interests, but at the same time, do not forget that law and morality in his professional activity are higher than the will of his client. Also, we should not forget about the derivative nature of the emergence of the powers of the lawyer, as well as the rule that he is prohibited from holding a position in the case contrary to the will of the client, unless the lawyer is sure of the client's self-incrimination. As noted by L. Steshenko and T. Shamba "the procedural independence of the lawyer in the civil process is determined by the limits of possible disagreements with the client, as regards the substantive nature of the disputable legal relations, the choice of means and methods of protection and the approval of the legal position in the case"[25]. In our opinion, this testifies to a certain restriction of the procedural self-dependence of the lawyer, but in no case to limit his professional independence (both at the external and internal levels).

In our opinion, the independence and independence of the lawyer are correlated as interrelated, but at the same time, different properties of his legal status. We adhere to the position according to which the independence of a lawyer should be perceived as an absolute category and concerns all aspects of his professional activity, whereas independence is a relative category and is associated primarily with the realization of the powers granted to him. These categories are not interdependent, since the increase in procedural independence does not entail an increase in the independence of the lawyer (which we consider to be absolute), or vice versa, the presence of absolute independence does not indicate the existence and the same independence.

In terms of considering our issue, we should pay attention to the fact that independence is generally considered by scientists as the main condition for the functioning of the bar[26], which is the cornerstone in determining its place

[24] Муллерат Р. Независимость – основной принцип юридической этики. *Адвокат*. 1996. № 11. URL: http://www.law.edu.ru/doc/document.asp?docID=1132077 (дата обращения: 25.08.2017).

[25] Стешенко Л., Шамба Т. Адвокатура в Российской Федерации: учебник. 2-е изд. М.: Норма, 2008. С. 375.

[26] Адвокатская деятельность и адвокатура в России: учебник для академического бакалавриата / под ред. И. Трунова. 2-е изд., перераб. и доп. М.: Юрайт, 2014. С. 12.

and role in society[27]. The fundamental principle characterizing the legal nature and status of the legal profession[28] is the principle of independence, around which there has been a fierce struggle throughout the history of the Bar Association[29].

Considerable attention is paid to the principles of independence of the bar and lawyer and international acts that determine the basic principles of the implementation of advocacy. In addition to those already mentioned, the General Code of Rights for European Community Lawyers (clause 2.1) and the Standards for the Independence of the Legal Profession of the IBA, other international acts concerning the activities of the Bar Association also indicate the need for professional independence of the advocate. Thus, the Basic Provisions on the Role of Lawyers[30] (respectively, and the Basic Principles on the Role of Lawyers[31]) are based on the need to create an effective opportunity for a person to use legal assistance carried out by an independent legal profession, which requires the provision of government lawyers (according to lawyers), including the ability to perform all their professional duties without intimidation, obstacles and undue interference. Regarding the nature of such acts, W. Teiler notes: "To date, the Basic Principles have not been approved by the UN General Assembly and are considered an instrument of "soft law", that is, they do not have the binding force of an international treaty. However, they are widely recognized as an

[27] Косарев М. Правовой статус адвоката в иностранных государствах. *Право и политика*. 2006. № 6. С. 150.

[28] Вільчик Т. Реалізація принципу незалежності професійної діяльності адвокатів у взаєминах з державною владою. *Вісник Академії адвокатури України*. 2014. Т. 11. № 2. С. 68–70. URL: http://nbuv.gov.ua/UJRN/vaau_2014_11_2_10 (дата звернення: 25.08.2017).

[29] Заборовський В. Правовий статус адвоката в умовах становлення незалежної адвокатури України: монографія. Ужгород: ВД «Гельветика», 2017. С. 205.

Заборовський В. Особливості правового статусу адвоката-представника в цивільному судочинстві. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2015. Вип. 35. Ч. 2. Т. 3. С. 163–164.

Заборовський В., Шкорка І. Місце адвоката-представника в цивільному судочинстві України. *Верховенство права та правова держава: матеріали міжнародної науково-практичної конференції* (Ужгород, 21–22 жовтня 2016 р.). Ужгород: Ужгородський національний університет, 2016. С. 153.

[30] Стешенко Л., Шамба Т. Адвокатура в Российской Федерации: учебник. 2-е изд. М.: Норма, 2008. С. 375.

[31] Трунов И. Безопасность, воспрепятствование, давление и вмешательство в деятельность адвоката. *Адвокатская практика*. 2006. № 1. С. 3.

instrument that expresses the consensus of the international community on the role of lawyers in different countries of the world"[32].

Such a position also exists in Recommendations № 21 of the Committee of Ministers of the Council of Europe of October 25, 2000[33] on the freedom to exercise the profession of a lawyer. In adopting this recommendation, the Committee of Ministers proceeded from an understanding of the need for an equitable justice system that guarantees the independence of lawyers in the performance of their professional duties, without any inadmissible restriction, impact, coercion, pressure, threats or interference, directly or indirectly, by any authority and for any reason. It also points out the need to take all measures to effectively ensure that all citizens have the right to legal assistance provided by independent lawyers.

The fact that the lawyer should be free (politically, economically and intellectually) in the course of carrying out his activities is also indicated in the Comments to the Charter of Fundamental Principles of the Activities of European Advocates of 2006[34], which means his duty to be independent of the state and other power interests and not to allow so that its independence was jeopardized by undue pressure from business partners. It should be noted that this Charter, with the above-mentioned General Code and Recommendation, are the main acts that determine the general principles of implementing advocacy in the EU countries.

The document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE[35], the independence of the lawyer, among others, is among the elements of justice that are essential for the full expression of dignity that is inherent in the human person and the equal and inalienable rights of all people.

It should be noted that this is by no means all international acts that emanate from the need for the independence of the professional activities of a lawyer to ensure an equitable judicial system, besides, we only paid

[32] Яновська О. Правова та соціальна природа адвокатської професії. *Вісник кримінального судочинства*. 2015. № 2. С. 113.

[33] Основні положення про роль адвокатів: міжнародний документ від 1 серпня 1990 р. / ООН. URL: http://zakon4.rada.gov.ua/laws/show/995_835 (дата звернення: 25.08.2017).

[34] Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August to 7 September 1990). URL: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOf Lawyers.aspx (date of access: 25.08.2017).

[35] Recommendation № R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies. URL: https://wcd.coe.int/com.instranet (date of access: 25.08.2017).

attention to the main aspects of ensuring such activities. In addition to international acts, the independent legal status of an advocate, as a prerequisite for the implementation of his professional activities, is considered by legislators of foreign countries. So, along with the already mentioned Ireland and Denmark, such countries, in particular, are: Poland (clause 7 of the Code of Ethics for the Lawyers of Poland (Collections of Rules on the Ethics of Advocacy and the Dignity of the Occupation)[36] provides that in the exercise of professional activity, the lawyer shall exercise complete freedom and independence) The Russian Federation (a lawyer is an independent professional counselor on legal issues (Part 1, Article 2 of the Federal Law of the Russian Federation "On Advocacy and Advocacy"[37]), France and Spain (Article 1 of the Law "On the Reform of Certain Judicial and Legal Professions"[38] and in accordance with Article 1 of the General Statute of the Bar in Spain[39] similarly indicate that the bar is a free and independent profession), Germany (in Article 1 of the Federal Law on Advocacy[40] it is noted that the bar is an independent body of justice), Belgium (one of the main duties of a lawyer is primarily to protect the interests of the client on the basis of full independence and freedom – Article 1.2 of the Code of Ethics of the lawyer[41]), Italy (duty of the lawyer to carry out professional activities on the basis of independence, fidelity, honesty, dignity, decency, diligence and competence provided for in Article 9 of the Code of Conduct of Italian Lawyers[42]) and others. This allows us to

[36] Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August to 7 September 1990). URL: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOf Lawyers.aspx (date of access: 25.08.2017).

[37] Recommendation № R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies. URL: https://wcd.coe.int/com.instranet (date of access: 25.08.2017).

[38] Основні положення про роль адвокатів: міжнародний документ від 1 серпня 1990 р. / ООН. URL: http://zakon4.rada.gov.ua/laws/show/995_835 (дата звернення: 25.08.2017).

[39] Goldsmith J. Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers. Brussels: CCBE, 2013. P. 9.

[40] Документ Копенгагенської наради Конференції щодо людського виміру НБСЄ від 29 червня 1990 р. / ОБСЄ. URL: http://zakon0.rada.gov.ua/laws/show/994_082 (дата звернення: 25.08.2017).

[41] The General By-law of the Spanish lawyer: Royal Decree from June 22, 2001, № 658/2001. URL: http://www.ccbe.eu/fileadmin (date of access: 25.08.2017).

[42] Le Code de déontologie de l'avocat, rendu obligatoire par le règlement du 12 novembre 2012 de l'Ordre des barreaux francophones et germanophone de Belgique. URL:

agree with the definition of the concept of "lawyer", provided by V. Dyukina, who perceives him primarily as a professional, qualified independent legal expert, who received the relevant status in the normative legal acts of the EU member states[43].

CONCLUSIONS

Independence and self-dependence of the lawyer are correlated as interrelated, but at the same time, different properties of its legal status. We adhere to the position according to which the independence of a lawyer should be perceived as an absolute category and concerns all aspects of his professional activity (the law does not restrict but rather determines the essence of the independence of the legal profession and establishes the mechanism for its provision), whereas self-dependence is a relative category and is associated primarily with the implementation authority granted to him. This is due, in particular, to the derivative nature of the appearance of the powers of the lawyer, the need to take into account the principle of the dominance of the client's interests (but the lawyer must not forget that the law and morality in his professional activity is higher than the will of his client), and above all on the one hand , the lawyer is entitled to choose independently the methods and means of providing assistance to his client, and on the other – he is prohibited from holding a position in the case contrary to the will of the client, unless the lawyer is confident in the client's self-incrimination. These categories are not interdependent, since the increase in procedural independence does not entail an increase in the independence of the lawyer (which we consider to be absolute), or vice versa, the presence of absolute independence does not indicate the existence and the same self-dependence.

Based on an analysis of the provisions of both the national legislation of the EU member states and the very law of the European Union, it can be concluded that the independent legal status of a lawyer is a prerequisite for providing them with legal assistance to a client on a professional basis.

SUMMARY

In the article the author reveals the nature of independence and self-dependence of the lawyer through the prism of clarifying the absolute or relative of their legal nature. It is stated that the independence and self-dependence of the lawyer are correlated as interrelated, but at the same time, different properties of his legal status. The conclusion is drawn that the independence of a lawyer should be perceived as an absolute category and concerns all aspects of his professional activity (the law does not restrict but rather determines the essence of the independence of the legal profession and establishes the mechanism for its provision), whereas self-dependence is a relative category and is associated primarily with the implementation of the provided authority.

REFERENCES

1. Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August to 7 September 1990). URL: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOf Lawyers.aspx (date of access: 25.08.2017).
2. Bundesrechtsanwaltsordnung (BRAO), ausfertigungsdatum 01.08.1959. URL: http://www.gesetze-im-internet.de/bundesrecht/brao/gesamt.pdf (date of access: 25.08.2017).
3. Code of Conduct for the Danish Bar and Law Society, applied by the General Council of the Danish Bar and Law Society as of 1 October 2011. URL: http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Denmark_Code_of_Conduct_for_the_Danish_Bar_and_Law_Society.pdf (date of access: 25.08.2017).
4. Codice deontologico forense, approvato dal Consiglio nazionale forense nella seduta del 31 gennaio 2014. URL: http://www.ordineforense.re.it/node/799 (date of access: 25.08.2017).
5. Le Code de déontologie de l'avocat, rendu obligatoire par le règlement du 12 novembre 2012 de l'Ordre des barreaux francophones et germanophone de Belgique. URL: http://www.barreaudebruxelles.info/images/publications/recueil_codeon_rdb.pdf (date of access: 25.08.2017).
6. Portant réforme de certaines professions judiciaires et juridiques: Loi du 31 décembre 1971 № 71-1130. URL: http://www.legifrance.gouv.fr (date of access: 25.08.2017).
7. Recommendation № R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies. URL: https://wcd.coe.int/com.instranet (date of access: 25.08.2017).

http://www.barreaudebruxelles.info/ images/publications/recueil_codeon_rdb.pdf (date of access: 25.08.2017).

[43] Дюкина В. Гражданско-правовое регулирование оказания адвокатских услуг в праве Европейского Союза: дисс. … канд. юрид. наук: 12.00.03. М., 2014. С. 30–31.

8. Standards for the independence of the legal profession, adopted by the IBA on 7 September 1990 in New York. URL: http://www.ibanet.org/Publications/publications (date of access: 25.08.2017).

9. The Code of Conduct of the Bar of Ireland, adopted by a General Meeting of the Bar of Ireland on 25th July 2016. URL: https://www.lawlibrary.ie/About-Us/What-We-Do/Regulation/Code-of-Conduct.aspx (date of access: 25.08.2017).

10. The General By-law of the Spanish lawyer: Royal Decree from June 22, 2001, № 658/2001. URL: http://www.ccbe.eu/fileadmin (date of access: 25.08.2017).

11. Zbioru Zasad Etyki Adwokackiej i Godności Zawodu (Kodeksu Etyki Adwokackiej): uchwałam Naczelnej Rady Adwokackiej z 19 listopada 2011 r. № 52/2011. URL: http://www.nra.pl/dokumenty (date of access: 25.08.2017).

12. Документ Копенгагенської наради Конференції щодо людського виміру НБСЄ від 29 червня 1990 р. / ОБСЄ. URL: http://zakon0.rada.gov.ua/laws/show/994_082 (дата звернення: 25.08.2017).

13. Загальний кодекс правил для адвокатів країн Європейського Співтовариства: міжнародний документ від 1 жовтня 1988 р. / ЄЕС. URL: http://zakon2.rada.gov.ua/laws/show/994_343 (дата звернення: 25.08.2017).

14. Основні положення про роль адвокатів: міжнародний документ від 1 серпня 1990 р. / ООН. URL: http://zakon4.rada.gov.ua/laws/show/995_835 (дата звернення: 25.08.2017).

15. Про адвокатуру та адвокатську діяльність: Закон України від 5 липня 2012 р. № 5076-VI / Верховна Рада України. *Офіційний вісник України*. 2012. № 62. С. 17. Ст. 2509.

16. Goldsmith J. Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers. Brussels: CCBE, 2013. 200 p.

17. Адвокатская деятельность и адвокатура в России: учебник для академического бакалавриата / под ред. И. Трунова. 2-е изд., перераб. и доп. М.: Юрайт, 2014. 703 с.

18. Бойков А. Независимость адвокатуры. *Ученые труды Российской Академии адвокатуры*. 2007. № 1. С. 14–22.

19. Великий тлумачний словник сучасної української мови / уклад. і гол. ред. В. Бусел. К.; Ірпінь: ВТФ «Перун», 2005. 1728 с.

20. Вартанов А. Проблемы процессуальной самостоятельности следователя по Уголовно-процессуальному кодексу Российской Федерации: дисс. … канд. юрид. наук: 12.00.09. Краснодар, 2012. 210 с.

21. Василевич М. Конституційно-правові гарантії незалежності судової влади: теорія та практика реалізації: автореф. дис. … канд. юрид. наук: 12.00.02. К., 2010. 17 с.

22. Вільчик Т. Реалізація принципу незалежності професійної діяльності адвокатів у взаєминах з державною владою. *Вісник Академії адвокатури України*. 2014. Т. 11. № 2. С. 63–74. URL: http://nbuv.gov.ua/UJRN/vaau_2014_11_2_10 (дата звернення: 25.08.2017).

23. Волков Д. К вопросу о процессуальной самостоятельности следователя. *Известия Российского государственного педагогического университета имени А.И. Герцена: аспирантские тетради*. 2007. № 11(32). С. 62–66.

24. Дюкина В. Гражданско-правовое регулирование оказания адвокатских услуг в праве Европейского Союза: дисс. … канд. юрид. наук: 12.00.03. М., 2014. 201 с.

25. Заборовський В. Незалежність та самостійність адвоката: проблеми розмежування. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2017. Вип. 42. С. 242–246.

26. Заборовський В. Особливості правового статусу адвоката-представника в цивільному судочинстві. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2015. Вип. 35. Ч. 2. Т. 3. С. 161–168.

27. Заборовський В. Правовий статус адвоката в умовах становлення незалежної адвокатури України: монографія. Ужгород: ВД «Гельветика», 2017. 900 с.

28. Заборовський В., Шкорка І. Місце адвоката-представника в цивільному судочинстві України. *Верховенство права та правова держава: матеріали міжнародної науково-практичної конференції* (Ужгород, 21–22 жовтня 2016 р.). Ужгород: Ужгородський національний університет, 2016. С. 149–152.

29. Калинюк С. Інститут адвокатури в механізмі реалізації права людини і громадянина на правову допомогу: конституційно-правовий аспект: дис. … канд. юрид. наук: 12.00.02. Ужгород, 2015. 203 с.

30. Калинюк С. Незалежність адвокатури як основна гарантія її діяльності: окремі термінологічні питання. *Порівняльно-аналітичне право*. 2015. № 5. С. 319–321. URL: http://www.pap.in.ua/5_2015/96.pdf (дата звернення: 25.08.2017).

31. Коваль К. Питання реалізації принципу незалежності адвокатури в процесі забезпечення державою права на безоплатну вторинну правову допомогу. *Конституційно-правовий аспект розвитку правової системи України: четверті юридичні читання: матеріали*

міжнародної науково-практичної конференції (Одеса, 25 жовтня 2013 р.). О.: Астропринт, 2013. С. 82–85.

32. Короткова П. К вопросу о независимости адвокатской деятельности. *Адвокатская практика*. 2013. № 6. – С. 8.

33. Косарев М. Правовой статус адвоката в иностранных государствах. *Право и политика*. 2006. № 6. С. 136–151.

34. Розанова В. Краткий толковый словарь русского языка. 7-е изд. М.: Русский язык, 1990. 255 с.

35. Михайленко О. Про забезпечення незалежності суддів у примусовому кримінальному процесі. *Етичні та правові проблеми забезпечення незалежності суддів: матеріали міжнародного науково-практичного семінару* (Харків, 30–31 березня 2005 р.). Х.; К.: ЦНТ «Гопак», 2006. С. 51–52.

36. Нор В., Білостоцький С. Захист незалежності судів і самостійності суддів у діяльності Національної Ради Судівництва Республіки Польща: досвід для України. *Вісник Львівського університету. Серія «Юридична»*. 2015. Вип. 61. С. 442–450.

37. Погорецький М., Яновська О. Адвокатура України: підручник. К.: Юрінком Інтер, 2014. 368 с.

38. Муллерат Р. Независимость – основной принцип юридической этики. *Адвокат*. 1996. № 11. URL: http://www.law.edu.ru/doc/document.asp?docID=1132077 (дата обращения: 25.08.2017).

39. Словник української мови: в 11 т. / за ред. І. Білодіда. К.: Наукова думка, 1978. Т. 9: С. 916 с.

40. Словник української мови: в 11 т. / за ред. І. Білодіда. К.: Наукова думка, 1974. Т. 5: Н – О. 840 с.

41. Современный толковый словарь русского языка: более 90 000 слов и фразеологических выражений / под ред. С. Кузнецова. СПб.: Норинт, 2001. 960 с.

42. Стешенко Л., Шамба Т. Адвокатура в Российской Федерации: учебник. 2-е изд. М.: Норма, 2008. 528 с.

43. Тейлер В. Международно-правовые стандарты независимости адвокатов. *Сравнительное конституционное обозрение*. 2015. № 5. С. 73–78.

44. Трунов И. Безопасность, воспрепятствование, давление и вмешательство в деятельность адвоката. *Адвокатская практика*. 2006. № 1. С. 2–8.

45. Фіолевський Д., Айгістова Д. Адвокатура незалежної України. *Вісник Донецького національного університету. Серія В «Економіка і право»*. 2009. № 2. С. 160–165.

46. Шульгач Н. Поняття та сутність принципу незалежності суддів. *Наукові записки Львівського університету бізнесу та права*. 2001. Вип. 6. С. 227–230.

47. Яновська О. Правова та соціальна природа адвокатської професії. *Вісник кримінального судочинства*. 2015. № 2. С. 108–113.

Information about authors:

Buletsa S. B.,
Doctor of Law, Associate Professor,
Head of Department of Civil Law and Procedure,
State Higher National University "Uzhgorod National University"
3, Narodna Sq., Uzhhorod, Ukraine

Zaborovsky V. V.,
Candidate of Law,
Associate Professor of Civil Law and Procedure
State Higher National University "Uzhgorod National University"
3, Narodna Sq., Uzhhorod, Ukraine

Lenger Ya. I.,
Candidate of Law,
Associate Professor, Department of Constitutional
Law and Comparative Law,
State Higher National University "Uzhgorod National University"
3, Narodna Sq., Uzhhorod, Ukraine

Lazur Ya. V.,
Doctor of Law, Associate Professor,
Dean of Law Faculty of,
State Higher National University "Uzhgorod National University"
3, Narodna Sq., Uzhhorod, Ukraine

Chepys O. I.,
Candidate of Law,
Associate Professor of Civil Law and Process,
State Higher National University "Uzhgorod National University"
3, Narodna Sq., Uzhhorod, Ukraine