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PECULIARITIES OF STATE REGULATION OF LEGAL SERVICES MARKET
IN THE COUNTRIES OF POST-SOVIET SPACE

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Comparison of normative definitions of advocacy in the national legislation of former Soviet republics is provided in the article. Here is noted that presented definitions of advocacy come from the legislative enshrining of some theoretical signs of advocacy, as general ones applicable to all the definitions considered, and special specific to individual definitions. Emphasized the attempt to characterize advocacy in Georgian legislation through its individual types without specifying common signs that characterize these types.

The conclusion is done that there is a gradual change in the conceptual approach to normative regulation of advocacy in the national legislation of former Soviet republics.

Keywords: legal services, advocacy, practice of law, legal assistance, legal services market, national legislation on the practice of law.

After carrying out the analysis of the legislation on barrister's activity and the bar of several countries of the former Soviet Union, can be concluded that all the considered normative-legal acts are divided into two groups, depending on the manner in which they define the concept of barrister's activity.

The first group includes laws that explicitly formulate the definition of barrister's activity. So, in accordance with parts 2, 3 article 1 of the Law of Turkmenistan [1], which entered into force on July 01, 2010 – article 48 of the law – barrister's activity is a professional legal assistance of counsel provided by law for the protection of human rights and freedoms, the legitimate interests of legal persons, and

the promotion and strengthening of the rule of law in society. Barrister's activity is non-entrepreneurial and payment, received by counsel for legal assistance, is its salary. From the above definition it is clear that it combines both modern ideas about the nature of barrister's activity (the content, professional and non-entrepreneurial nature of the activity of a special subject – barrister, goals) and features of the normative regulation of the tasks of the Bar contained in article 1 of the Law of the USSR "On the Bar of the USSR" from 30.11.1979 regarding the mentioning of such purpose of barrister's activity as promotion of the rule of law in society.

Interesting structure is presented in the legislation of Tajikistan [2], according to which barrister's activity is the activity of lawyers to provide legal assistance. Legal aid – a kind of social assistance provided in the legal field to physical and legal persons, which consists in the use of all legal means and methods to protect the legitimate rights and interests of these persons (article 2 of the Law of the Republic of Tajikistan). Thus, this normative regulation has certain specificity, which lies in the fact that the essential features of barrister's activity are given indirectly – through the definition of legal aid as its content. In addition, the indication of the possibility to use any legal means and methods in providing assistance should be limited by the indication of their legal nature, which emphasizes the possibility of purposeful influence on the problem of a person, which lies in a lawful manner, by legal means and methods.

Description of the essence of barrister's activity through its theoretical basis is a characteristic of the Armenian legislation. In accordance with the Law of the Republic of Armenia "On the Bar" [3], barrister's activity – a kind of advocacy aimed at the implementation of legitimate interests pursued by the recipient of legal aid through lawful means and methods (article 5 of the Law of Armenia).

In accordance with article 1 of the Law "On the Bar and Barrister's Activity in the Republic of Belarus" [4], barrister's activity – legal aid provided on the professional basis by lawyers in the manner prescribed by this Law to individuals, including individual entrepreneurs, legal entities, as well as to the State (hereinafter, unless otherwise provided, the clients) for the implementation and protection of their rights, freedoms and interests, as well as ensuring access to justice. Under the legal aid in the said Law refers an activity to assist clients in understanding, proper use and compliance with the legislation, which is aimed at the implementation and protection of rights, freedoms and interests of clients, as well as at representing clients in courts, government agencies, other organizations and against individuals. In the considered legal structure the assignment of the state to the recipients of lawyer's legal aid seems to be interesting. Paragraph 1 article 11 of the Law

provides that lawyers shall be entitled to carry out legal activity only after obtaining a license by way provided for by legislative acts, and becoming a member of a territorial Bar Association, which is obliged to accept a lawyer. Permissive beginning for admission to the profession of lawyer is further enhanced by a normative requirement, under which the renewal of the license is done by the Ministry of Justice of the Republic of Belarus at the request of counsel in light of its compliance with the legislation on the Bar, according to the results of attestation carried out in the manner prescribed by law (article 11 the Law). The Bar is involved in legal education of citizens (article 5 of the Law). The latter provision could also be considered as a borrowing from an earlier act - article 1 of the Law of the USSR "On the Bar in the USSR" from November 30, 1979.

The Law of Ukraine "On the Bar and Barrister's Activity" [5] establishes that barrister's activity - an independent lawyer's professional activity on the implementation of protection, representation and providing of other forms of legal assistance to a client (paragraph 1 article 1 of the Law). The law under consideration recognizes protection as a form of barrister's activity, which lies in ensuring the protection of the rights, freedoms and legitimate interests of a suspect, accused, convicted, acquitted one, a person concerning which is provided for the application of compulsory measures of medical or educational nature or a decision on application them in criminal proceedings is being taken, a person, with respect to which is being considered the issue of extradition to a foreign government (extradition), as well as a person, which is brought to administrative responsibility during the proceedings of a case on an administrative offense.

The closest to the current legislation of the Russian Federation on the Bar is the definition of barrister's activity given in article 2 of the Law of Kyrgyzstan [6]: barrister's activity is an activity of a lawyer to provide competent legal assistance to individuals and legal entities in the defense of their rights, freedoms and legitimate interests. With these, an indication of the state licensing of barrister's activity testifies the application of state permissive order of implementing the activity, as well as the subsequent control by the public authorities over the implementation of barrister's activity.

Thus, these definitions of barrister's activity are based on legislative consolidation of some theoretical signs of barrister's activity, both common for all considered definitions and special specific to individual ones.

However, there is an attempt to characterize barrister's activity through its individual types without indicating common features that characterize these types. Article 2 of the Law of Georgia [7] indicates that barrister's activity includes: giving

legal advice by counsel to persons applying to him for help (clients); representation of a client in the course of the constitutional dispute in criminal, civil and administrative cases in court, arbitration, bodies of pre-trial detention, interrogation and investigation; preparation of legal documents in relation to third parties and the submission of any document on behalf of a client; provision of legal assistance not related to the representation against third parties. Article 2 of the Law of Georgia on "Legal Assistance" [8] points out that legal assistance is a drafting of legal documents, representation in court and administrative body regarding administrative and civil cases, as well as at the expense of the State at criminal proceedings. In accordance with article 3 of this Law, types of legal aid are:

- a) drafting of legal documents;
- b) protection of the interests of the accused and convicted during the process of criminal law;
- c) protection of a victim during the criminal procedure in accordance with the Criminal Code of Georgia, in the case of protection at state expense;
- d) representation in court in connection with administrative and civil cases;
- e) representation in an administrative body

The second group of legislative acts includes laws, in which the notion of barrister's activity is not directly enshrined, but its essence is defined through the concept of the Bar and its tasks. For example, part 1 article 1 of the Law of Azerbaijan "On Barristers and Barrister's Activity" [9] stipulates that the Bar in the Republic of Azerbaijan is an independent legal institute that professionally carries out activities on juridical protection. The main tasks of the Bar are protection the rights, freedoms and lawful interests of individuals and legal entities, and providing them with high-quality legal assistance (article 3 of the Law of the Republic of Azerbaijan). The feature of considered act is that the concepts of juridical and legal assistance are used interchangeably, which follows, for example, from the wording: lawyers are involved in the following matters relating to the provision of legal aid (part 3 article 4 of the Law of the Republic of Azerbaijan).

In accordance with part 1 article 1 of the Law of Moldova "On the Bar" [10] barrister's activity is carried out by qualified persons authorized by law to speak and act on behalf of their clients, to practice law, to be brought before a judicial instance or advise and represent clients in legal matters. From the presented definition it is clear that the term "barrister's activity" is disclosed through separate types of legal assistance.

The following definitions are close enough both in respect of the period of adoption of appropriate acts and the juridical technology. The Law of Uzbekistan

“On the Bar” [11] provides that the Bar is a legal institute, which includes independent, voluntary, professional association of persons engaged in barrister’s activity, and individuals engaged in the private practice of law. The Bar in accordance with the Constitution of the Republic of Uzbekistan provides legal assistance to citizens of the Republic of Uzbekistan, foreign citizens, stateless persons, companies, institutions, organizations (article 1 of the Law of Uzbekistan). A similar juridical technology is used in a later act – the Law of Estonia “On the Bar” [12], which provides that the Estonian Bar Association is a professional association of lawyers established June 14, 1919 and acting on the principles of self-government, the purpose of which is to organize the provision of legal services in private and the public interests, as well as the protection of professional rights of lawyers. The Bar is a public-law legal entity (paragraphs 1, 2 article 1 of the Law of Estonia).

In addition to the above definitions, there is a definition of the Bar through its purpose. In accordance with paragraph 1 article 1 of the Law of Kazakhstan “On Barrister’s Activity” [13] the Bar in the Republic of Kazakhstan is intended to facilitate to the implementation of guaranteed by the government and enshrined by the Constitution of the Republic of Kazakhstan human rights on the legal protection of their rights and freedoms, and getting qualified legal assistance. The Law of the Republic of Kazakhstan No. 523-IV LRK from December 28, 2011 amended the norm of article 1 by paragraph 3, according to which barrister’s activity is a qualified legal assistance provided in a professional manner by lawyers in the way prescribed by this Law, in order to protect and promote the realization of the rights, freedoms and legitimate interests of individuals, as well as the rights and legitimate interests of legal persons. This fact also leads to the conclusion that there is a gradual change in the conceptual approach to normative regulation of the Bar.

From the given definitions it is clear that they are formulated with use of the terms of “legal assistance”, “qualified legal assistance”, i.e. the part of normative structure is the same as the one used for the interpretation of barrister’s activity in the Russian Federation. This aspect corresponds to the respective constitutional right of a person.

One of the latest trends in government regulation of the legal services market is the adoption of new normative acts, which evidence of conceptual change in the relevant legislation. This trend can be fully traced through the example of Belarus and Ukraine that passed new legislation in the area of the Bar, which has enshrined the definition of barrister’s activity and completed the transition of these countries from the second group to the first one.

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