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THE CIVIL LAW REGULATION OF ORGANIZATIONAL FORMS OF ADVOCATORY ACTIVITY ALONG WITH THE FOUNDING LEGAL ENTITIES

The advocates play a significant role in everyday life, although, as a rule, only those who use the services of advocates are aware thereof. At the same time, the role of an advocate, as well as the importance of the institution of advocacy, varies in many countries.

On January 12, 2023, the Verkhovna Rada of Ukraine adopted as a basis a draft law On the Specifics of Regulating Business Activities of Certain Types of Legal Entities and Their Associations During the Transition Period. This draft proposes to invalidate the Economic Code of Ukraine, as well as introduce a transition period of 7 years for the gradual termination of «enterprises» and their transformation into business entities.

These probable regulatory approaches, of course, cannot but affect the organizational forms of advocacy, two of which involve founding an entity with the status of a legal entity. At the same time, the expediency of effective regulation of advocacy is beyond doubt, and the importance of the Institute of Advocacy in Ukraine is difficult to overestimate.

Quite often, the advocates create legal entities in other organizational and legal forms (in particular, limited liability companies) to provide legal services. In addition to the specifics of registration of powers to provide legal assistance (a warrant can only be issued by advocate, a advocatory bureau, or a advocatory association in accordance with the requirements of the Law of Ukraine «On the Advocacy and Advocatory Activity»), these legal entities are not required to notify in writing the relevant council of advocates of the region within three days from the date of entering relevant information in the Unified State Register of Legal Entities and Individual



Entrepreneurs about their creation, reorganization or liquidation, as well as about changes in the composition of participants. As it seems, in this context, taking into account the special requirements for the constitutional guarantee of the possibility to obtain legal aid and ensure its quality, the situation should be further improved by introducing the necessary legislative changes.

In the course of reforms in Ukraine, it is necessary to preserve and consolidate the essential role that advocates often play while ensuring the implementation of the principles of the rule of law and the legality in society.

Key words: *advocate, advocacy association, advocacy bureau, legal entity, legal form, organizational form, advocacy activity.*

Юркевич Ю. М., Вовк М. З., Заяць О. С. Цивільно-правове регулювання організаційних форм адвокатської діяльності зі створенням юридичних осіб

Адвокати відіграють вагомую роль у повсякденному житті, хоча, як правило, її усвідомлюють лише ті, що користуються адвокатськими послугами. При цьому роль адвоката, як і значення інституту адвокатури, в багатьох країнах різняться.

Верховна Рада України 12 січня 2023 року прийняла за основу проєкт Закону про особливості регулювання підприємницької діяльності окремих видів юридичних осіб та їх об'єднань у перехідний період. Цим проєктом запропоновано визнати таким, що втратив чинність, Господарський кодекс України, а також запровадити перехідний період на 7 років для поступового припинення «підприємств» та їх перетворення у господарські товариства.

Такі ймовірні нормативні підходи, безумовно, не можуть не вплинути на організаційні форми адвокатської діяльності, дві з яких передбачають створення суб'єкта зі статусом юридичної особи. При цьому, доцільність ефективного регулювання адвокатської діяльності не викликає сумнівів, а значення інституту адвокатури в Україні важко переоцінити.

Досить часто адвокати створюють для надання правничих послуг юридичні особи в інших організаційно-правових формах, зокрема, товариства з обмеженою відповідальністю. Окрім особливостей оформлення повноважень на надання правничої допомоги (ордер може видаватися лише адвокатом, адвокатським бюро або адвокатським об'єднанням відповідно до вимог Закону України «Про адвокатуру та адвокатську діяльність»), такі юридичні особи не мають обов'язку повідомляти протягом трьох днів з дня внесення відповідних відомостей до Єдиного державного реєстру юридичних осіб та фізичних осіб – підприємців письмово про їх створення, реорганізацію або ліквідацію, зміну складу учасників відповідну раду адвокатів регіону. Як видається, у цьому контексті, зважаючи на особливі вимоги до конституційної гарантії можливості одержання правничої допомоги та забезпечення її якості, ситуація має бути у подальшому удосконалена шляхом внесення необхідних законодавчих змін.

У ході реформ в Україні необхідно зберегти та закріпити ту суттєву роль, яку адвокати часто відіграють у забезпеченні реалізації принципів верховенства права та законності в суспільстві.

Ключові слова: *адвокат, адвокатське об'єднання, адвокатське бюро, юридична особа, організаційно-правова форма, організаційна форма, адвокатська діяльність.*

Introduction. The advocates play a significant role in everyday life, although, as a rule, only those who use the services of advocates are aware thereof. At the same time, the role of an advocate, as well as the importance of the institution of advocacy, varies in many countries. At the same time, it is worth paying attention to the fact that the powers of an advocate, organizational



forms of advocacy activity, the importance of advocacy as a whole, etc. are undergoing changes in almost every state during socio-economic transformations. It should also be noted that despite the stormy times and the struggle of our state against the criminal armed aggression of Russia, the reforms in Ukraine do not stop.

Many scientists have devoted their works to the study of this problem, including: I. Hobechia, I. Holovan, T. Fedchenko, N. Fokina and many others.

The purpose of the article is a research of civil law regulation of organizational forms of advocacy activity along with founding legal entity and formulation of proposals to improve the legal regulation of relevant relations.

Research results. On January 12, 2023, the Verkhovna Rada of Ukraine adopted as a basis a draft law On the Specifics of Regulating Business Activities of Certain Types of Legal Entities and Their Associations During the Transition Period. This draft proposes to invalidate the Economic Code of Ukraine, as well as introduce a transition period of 7 years for the gradual termination of “enterprises” and their transformation into business entities. This draft law is generally consistent with the concept of updating the Civil Code of Ukraine. At the same time, the approach proposed by the Concept is of particular interest to the fact that the Civil Code of Ukraine, as a fundamental act of private law, which also regulates general provisions on legal entities, should define an exhaustive list of their organizational and legal forms while simultaneously rejecting archaic constructions of the legal entities (first of all, we are talking about enterprises) [1, p. 9]. These probable regulatory approaches, of course, cannot but affect the organizational forms of advocacy activity, two of which involve founding an entity with the status of a legal entity. At the same time, the expediency of effective regulation of legal practice is beyond doubt, and the importance of the Institute of Advocacy in Ukraine is difficult to overestimate.

Therefore, we consider it appropriate to divide this study into several blocks of problematic issues.

The first block concerns the problem of the organizational and legal form of legal entities that provide legal services. In particular, if we turn to foreign experience, then, for example, in accordance with the German Federal Bar Regulation, limited liability companies whose business is to provide consulting and representation in legal matters may be granted permission to practice law as law firms. In Germany, only lawyers or representatives of relevant professions can participate in the law firms [2]. In accordance with the Law “On the Advocacy of Poland”, a lawyer performs professional duties in the lawyer’s office, in the lawyer’s group or in the association: 1) civil partnership; 2) on the principle of a full company; 3) on the principle of a partnership or limited joint-stock company [3].

In paragraphs 3.2.8 and 3.2.9, the State Classifier of Ukraine “Classification of Organizational and Legal Forms of Management ДК002:2004” refers advocacy associations and advocacy bureau to business entities. Therefore, we consider the conclusion about the independence of their organizational and legal forms to be correct. And the point is not even that by the decision of the Higher Administrative Court of Ukraine as of 13.11.2014, the State Statistics Committee was obliged to develop changes and amendments to the classification of organizational and legal forms of management by introducing separate positions for the organizational and legal forms of “advocatory association” and “advocatory bureau” [4]. The independence of the organizational and legal forms of “advocatory association” and “advocatory bureau” is confirmed in the literature absolutely in the right way with such arguments, including the fact that, according to the provisions of the Civil Code of Ukraine and the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations”, the requirements for the name of legal entities are established, which should consist of an indication of the organizational and legal form and the name (in this regard, the analysis of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations showed that the names of the studied legal entities contain the words “advocatory association” or “advocatory bureau” and their names) [5, p. 91].

Despite this, we are forced to state that quite often, advocates create legal entities in other organizational and legal forms (in particular, limited liability companies) to provide legal services.



In addition to the specifics of registration of powers to provide legal assistance (a warrant can only be issued by an advocate, advocacy bureau, or advocacy association in accordance with the requirements of the Law of Ukraine “On the Advocacy and Advocatory Activity”), these legal entities are not required to notify in writing the relevant council of advocates of the region within three days from the date of entering relevant information in the Unified State Register of Legal Entities and Individual Entrepreneurs about their creation, reorganization or liquidation, as well as about changes in the composition of participants. As it seems, in this context, taking into account the special requirements for the constitutional guarantee of the possibility to obtain legal aid and ensure its quality, the situation should be further improved by introducing the necessary legislative changes.

The second block of problematic issues concerns the purpose of running advocacy association (office). Thus, meanwhile, there is no unified approach to qualify the legal practice and the activities of advocacy associations as entrepreneurial or non-entrepreneurial one. When investigating these issues, it is worth starting from the fact that such activities are directly related to the provision of legal assistance. According to Clause 3.2. of the Decision of the Constitutional Court of Ukraine No. 23-пн/2009 as of 30.09.2009, legal assistance is multidimensional, different in content, scope, and forms, and can cover consultations, explanations, drafting of claims and appeals, certificates, applications, complaints, representation, in particular in courts and other state bodies, protection from prosecution, etc., and the choice of the form and subject of providing such assistance depends on the will of the person who wants to receive it [6]. In some scientific sources, the opinion is expressed that the bar associations’ activities belong to non-commercial management [7]. At the same time, according to the requirements of the Tax Code, non-profit enterprises, institutions and organizations are enterprises, organizations and institutions whose main purpose is not to make a profit, but to carry out charitable activities and patronage and other activities provided for by law [8]. Guided by this provision of tax legislation, other authors express the opposite position, according to which an advocacy bureau and an association have no legal grounds for obtaining the status of a non-profit organization. In addition, they also indicate that an individual engaged in independent legal practice cannot be an entrepreneur within the framework of such legal practice. At the same time, the current legislation does not prohibit an individual engaged in independent legal practice from being an entrepreneur and carrying out other (other than legal) business activities that are not prohibited by law [9].

In our opinion, the current legislation of Ukraine on the advocacy and advocatory activity does not give an unambiguous answer to the question of whether legal practice (like the activities of advocacy associations) is entrepreneurial or non-entrepreneurial. At the same time, it is obvious that the advocacy associations’ activities are carried out for the purpose of making a profit. In particular, as provided for by the current legislation of Ukraine, advocacy activity is an independent professional activity of an advocate, and the advocacy of Ukraine is a non-governmental self-governing institution that provides protection, representation and other types of legal assistance on a professional basis, as well as independently resolves issues of organization and activity of the advocacy in accordance with the procedure established by law. That is, to comply with the principles of “independence” and “autonomy”, the funding is necessary. Accordingly, the advocates (after founding an association) receive the necessary funding while directing their activities to make a profit [10].

For some reason, from the analysis of the norms of the current legislation of Ukraine, it is not considered possible to single out the constitutive features of advocacy associations that would allow us to characterize their status:

- Is it an entrepreneurial or non-entrepreneurial organization?
- Is it necessary to create a system of executive bodies, or is it enough to assign such functions to one of the advocates (for example, a managing partner)?
- Is every advocate obliged to participate in the association’s activities through their own professional work, or can they limit themselves to a property contribution?
- Can an advocate participate in the activities of only one advocacy association? Is it possible to be a member of several ones?



– Can an advocate of an advocacy association also be a member of another law firm of a different organizational and legal form, etc.?

In our opinion, it is unjustified to clearly regulate these issues at the level of the law, thus limiting the principle of freedom of advocates as participants in civil and economic turnover. In this regard, we consider it necessary to support the concept of contractual regulation of the specifics of the advocacy activity within the framework of the advocacy association on the basis of the agreement on establishing advocacy association, which shall establish the legal regime of the property transferred thereto, the peculiarities of management, the use of the business reputation of individual advocates, determination of entrepreneurial or non-entrepreneurial status etc. [10].

The third block concerns the specifics of state registration and problematic aspects in the course of the activities of advocacy associations (bureau). In particular, studying the problems of the creation and operation of advocacy associations in Ukraine, it is worth noting that according to Article 15 of the Law of Ukraine “On the Advocacy and Advocatory Activity”, these belong to legal entities created by the association of two or more advocates (participants), and act on the basis of the charter. According to the current legislation of Ukraine, the requirements for an individual who intends to obtain a certificate of the right to practice advocacy activity, as well as the circle of persons who cannot be advocates, are defined.

Despite the above, the state registration of a advocacy association is carried out in accordance with the procedure established by the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations”, taking into account the specifics provided for by the Law of Ukraine “On the Advocacy and Advocatory Activity”.

Thus, Article 17 of the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations” defines the list of documents required for state registration of legal entities, regardless of their organizational and legal form. In turn, according to Article 28 of the mentioned Law of Ukraine, an exhaustive list of grounds for refusal of state registration of associations with the status of a legal entity is defined.

However, a number of issues are not legislated in detail, including, for example:

– Documents for state registration of the advocacy association were submitted by persons whose legal practice was suspended (there are no direct formal grounds for refusing to carry out such state registration in the Law of Ukraine “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations”);

– In the course of the activities of the advocacy association, one, several, or all of its members have suspended their legal activities;

– A member of the association was convicted of committing a serious, especially serious crime or a moderate crime, for which a penalty of imprisonment was imposed;

– A member of the association is recognized by the court as legally incompetent or with limited legal capacity;

– A member of the association is deprived of the right to practice law;

– Association participant violated the requirements for incompatibility, etc. [11].

At first glance, the answer to these questions can be given based on a systematic analysis of all legislative acts that relate to the sphere of regulation of the relations we have outlined.

However, based on the results of the analysis of the work results in the “Organizational and Legal Forms” thematic subgroup of the “Modernization of Legal Regulation of Business Conditions in Ukraine” Work Group under the Ministry of Justice of Ukraine, which took place back in 2016, it was possible to verify not only the absence of a single structure and an exhaustive list of organizational and legal forms, the existence of abnormal organizational and legal forms of legal entities that are not such by nature or are no longer provided for by the current legislation, but also that quite often state registrars mistakenly and variously interpret the legislation on legal entities in practice. These problematic practical situations, by the way, relate not only to legal practice in the form of bar associations.

Conclusions. Summing up, it is advisable to conclude that the lack of a single answer to the questions we are studying in the context of the further legal fate of advocacy associations



and bureau, in the context of the growing importance of the institution of advocacy and the need to increase the guarantees of advocacy activity should not be considered the norm. In the course of reforms in Ukraine, it is necessary to preserve and consolidate the essential role that advocates often play while ensuring the implementation of the principles of the rule of law, legality and democracy in society.

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