

# ROLE OF LEGAL PROFESSION IN THE IMPLEMENTATION OF THE CIVIL SOCIETY HUMAN RIGHTS

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## ABSTRACT

*The Bar in the mechanism of protection of rights and freedoms of a person and citizen is one of the means for self-restriction of state power through the creation and active functioning of an independent human rights institution that is an active actor in the implementation process of the main constitutional function of the state—the realization and protection of human and civil rights and freedoms. The constitutional and legal status of legal profession allows it to actively ensure the rights of not only each person, but also of the entire civil society, to effectively implement the human rights function of the state by ensuring proper interaction in the activities of government bodies and civil society. Being an active participant in the law enforcement mechanism, occupying an independent place in the mechanism of justice, a legal profession performs (should perform) an important function of public control in this area.*

**Keywords:** Principle of Independence, The Bar, Public Interest, Civil Rights and Freedoms, Legal Basis.

**JEL Classifications:** K21

## INTRODUCTION

An important position of modern, justified law in the life of society with the aim of ensuring a strictly legal order (including on issues of state coercion), provides for the preservation and strengthening of modern legal values, all human achievements accumulated in the field of legal guarantees of human rights and freedoms, as well as legal means that provide a true realization of legal ideals and values.

According to the priority principles of modern law, the principle of independence, now one of the few ways necessary for a person's rights and freedoms to become meaningful grounds for legally significant actions is their recognition as legally significant actions and in this respect legally sufficient for judicial bodies (court). It is a court operating in due process, in its place in the legal system, by its status and capabilities should, in accordance with the principle we are considering, directly determine the legal consequences according to the order established in justice, established facts-situations requiring legal response and, therefore, constitutional rights

and human and citizen freedoms as such can serve as an immediate legal basis for making legally significant decisions only for a court.

## REVIEW OF PREVIOUS STUDIES

Indisputable is the fact that the principle of independence occupies the first place among such ideals and values, according to which at the present stage of development of civilization human rights and freedoms are a legal reality and directly enter into positive law—they remain common principles, defining and basic guidelines for applicable law (Tetiana et al., 2018). They are intended to serve as the basis of the state's legal policy, to direct law-making activities, efforts for implementation of the constitutional rights and freedoms of a person and a citizen in the whole complex of legal norms, legal orders and procedures. They matter as a criterion in interpreting the law even more in the formation of legal consciousness, a common attitude to the law on the part of all subjects, especially all citizens, officials and the state as a whole (Parker & Evans, 2018).

And this implies the recognition in practice existing legal principles and mechanisms expressing such legal ideals and values as permanent and indestructible (Carey, 2018).

In the modern legal literature devoted to the institute of legal profession, the term “*independent*” is used in various situations: firstly, many scholars emphasize the principle of the independence of legal profession; secondly, in determining the status of lawyers, the legislator establishes guarantees of their independence, that is, it is a question of the independence of legal profession.

## METHODOLOGY

The comparative legal method was used in the process of analyzing the Bar in foreign countries, both in statics and in dynamics. This method was also used to learn the general and distinctive features of the constituent elements of the systems under study.

The content of the legal regulations governing social relations, within the framework of which the organization and functioning of the Bar is organized, was disclosed with the help of a special legal method of cognition. The comparative legal method was used in the process of analyzing the Bar in foreign countries, both in statics and in dynamics. This method was also used to learn the general and distinctive features of the constituent elements of the systems under study.

## RESULTS AND DISCUSSION

The issue of limiting the constitutional rights and freedoms of a person on the part of the institutions of power and above all of the state, judicial bodies has always been and remains one of the most pressing in political and legal terms throughout the development of human civilization. At the turn of the 20-21 centuries, this problem acquired a special meaning in the context of the idea and practice of legal statehood and more and more often there are cases of violations of human rights and freedoms, both on the part of the other individuals and of the state.

In order to properly carry out professional activities, a lawyer needs independence from the persons and bodies in whose proceedings the assigned to him/her case is handled, as well as from other authorities and officials.

The right to independence is one of the key characteristics of the lawyer profession. It must be based on moral freedom, a high level of general and legal culture and extensive professional experience. As the party itself, which tries to control the activities of the legal profession during the entire period of our state's history, is the state itself, in the future, we will pay more attention to the problems of relations between the Bar and the state represented by its relevant bodies: judicial, law enforcement, administrative and others.

This is evidenced by the imperative of professional protection of the rights and legitimate interests of persons in court, the public-legal status of this institution, the provision by the state the right to receive legal assistance to absolutely all individuals and legal entities. The independence of the legal profession is one of the main principles of legal profession. Therefore, there must be not only reliable mechanisms to ensure this principle, but also unconditional compliance.

A person who does not have a close relationship with jurisprudence may get the impression that any right is a phenomenon of state order and nothing more. For the most part, this statement is true, because it is thanks to the state that the use of social means, norms of behavior find such properties (official, public character, high state guarantee) that implement imperatives in the practical life of modern civilization-provide such a solution to life situations that is hard, certain in content, with reliable guarantee and sovereignty. And most importantly, they are built on a final basis; act as a normative regulator, which is distinguished by universality and binding nature.

In the considered point of view, law, as an imperious state phenomenon, can be characterized, according to Stern (2017), as a power institution capable, based on the strength of state coercion, to impose its will, to enforce certain standards, behavior programs, regulations throughout the country. In this part, one of the formulations of law that comes from the Soviet period, as the will of the ruling class raised to the law, remains valid. At the same time, there are branches in the structure of law that are referred to as "*coercive*": criminal law, criminal and executive law, administrative law.

The power of political, state authority forms the core of a new general territorial entity-a state; it is concentrated in the hands of various state bodies that possess instruments of imposing the will of the dominant, primarily instruments of coercion, capable of giving their will an obligatory character.

Given the above, it is easy to see that the decisive factor that "*rehabilitates*", so to speak, many of the actions of the state is the law itself.

On the one hand, the state provides common norms and principles with general standards, the possibility of strict legal certainty of the content of regulation and on the other hand, it is the state that provides law enforcement agencies, bodies of jurisdiction, justice with the necessary powers and appropriate means of influence and also determines other legal forms grounds and order of their activities. The state of social relations in the state depends on the role of law in its activities.

With a reasonably progressive social system, with a developed democratic and legal culture, especially in a civil society, the state, due to the need to conform to democratic and high material values, reduces its imperative administrative and mandatory regulations, imposes

imperative government activities in strict limits. Such self-restriction of power acquires a real character in a developed democratic society. And only then the provisions and formulas about a legal, democratic state, civil society and the rule of law are being produced and acquiring significance.

Legal profession is an institution of civil society that is not part of the system of state power and local self-government. On the basis of this, state and local government bodies should not and more precisely, have no right to interfere in the activities of lawyers, except for cases when this activity contradicts the law. At the same time, the independence of legal profession can be understood in two ways. The question is from whom should legal profession be independent and for what. For what, with a brief review, it becomes clear that, by fulfilling our constitutional mission of protection rights and freedoms, we should have a real opportunity to protect the rights and interests of individuals and prevent their violation, including (most importantly) on the part of state. From whom the answer to this question has already been given in the answer to the previous question-first of all, from the state represented by its authorities and officials.

The conclusion of the International Bar Association rightly gives accent to the need to support the independence of the legal profession, but at the same time it is noted that no state is able to put up with the full independence of the legal profession and any other profession in modern society.

In the same conclusion of the International Bar Association, the independence of the legal profession is understood as: independence from the influence of the state, which means interfering with the relationship between the client and the lawyer, which prevents the latter from fulfilling his/her professional duties; independence by self-government, which means that the legal profession and its members must manage their affairs independently. At the same time, state bodies and officials (parliament, government, court) may be interested in the activities of the legal profession; independence, which is based on the decency of a lawyer (Cleis, 2017).

At the same time, even the General Code of Rules for lawyers of the countries of the European Community declared one of the main principles of the legal profession: "*Tasks performed by a lawyer in the course of his professional activities require his absolute independence and the absence of any influence on him, primarily due to his personal interest or pressure from outside*" (Gerson, 2017). According to clause 1.1 of the preamble of the professional rules of lawyers of the European Union, the legal profession is considered as a free, independent, holistic professional status (Galanter & Robinson, 2017).

The Model Rules of Professional Conduct of the International Bar Association (Commonwealth) establish that a lawyer is independent in professional activities.

The Bar is a complex manifestation of both state and public interest; since it is through the legal profession and thanks to it that a state governed by the rule of law realizes the possibility of ensuring its citizens their rights and freedoms. The activities of lawyers, on the one hand, are constitutionally determined state-significant in nature and on the other hand, lawyers should be as independent as possible from the state in order to effectively protect citizens and legal entities from administrative arbitrariness. The Bar is a unique legal phenomenon, it is the only organization that performs the state (public law) function and is not a government agency. The Bar, on the contrary, maintains independence from the state.

In addition, international law, in particular Article 16 of the Basic Provisions on the Role of Lawyers, adopted by the UN Congress, provides for the obligation of the government to

provide lawyers with the opportunity to perform their professional duties without intimidation, obstacles, problems and inappropriate interference. And in the event that the security of lawyers is threatened by implementation of their professional duties, they must be adequately protected by the authorities (Tetiana et al., 2018; Olga et al., 2019).

In accordance with the standards of independence of the legal profession of the International Bar Association, the independence of the legal profession is the most important guarantee for the protection of human rights and is a prerequisite for effective and adequate access to legal services. In order to establish and maintain law and order, the legal profession must be independent in the performance of its professional duties, that is, without undue restrictions, direct or indirect pressure or interference, a lawyer should not be equated with authority.

The results of our study are confirmed by the following studies. They matter as a criterion in interpreting the law even more in the formation of legal consciousness, a common attitude to the law on the part of all subjects, especially all citizens, officials and the state as a whole (Parker & Evans, 2018).

## CONCLUSIONS

We believe that the legal profession, as one of the institutions of civil society, the constitutional guarantee of respect for the rights and freedoms of a person and citizen, fulfills a noble mission, should to some extent cooperate with state bodies and not be controlled by the executive institutions of the state. However, such cooperation should be manifested in terms of the overall development of the law in the country, strengthening citizens' respect for the law, but should not be in any way connected with any interference of state bodies in the internal activities of the legal profession or the exercise of professional duties by lawyers. However, to this day, unfortunately, many negative tendencies have accumulated in the relations between state bodies and the legal profession, which sometimes strengthen and weaken. A complete balance of these relations is not yet achieved.

## RECOMMENDATIONS

According to the results of our study, we recommend the implementation of a lawyer's monopoly to represent the interests of a person in court, which will significantly increase the standards of legal assistance. These standards should include the need for a certain level of legal knowledge, compliance with important ethical standards, limitation of fees, which should be reimbursed by the losing party, etc. Accordingly, the availability of such a standard also requires a certain level of lawyer's liability, at least a disciplinary liability to his colleagues, which threatens to lose the opportunity to engage in such work.

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