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POWERS OF LAWYER FOR CRIMINAL PROCEDURAL LEGISLATION OF UKRAINE

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Annotation. The scientific paper is devoted to the development of theoretical foundations of the current state of criminal procedural investigation proceedings in cases concerning the powers of a lawyer, describes a human advocate of justice and generalized practice of current criminal procedure law in this area.

Keywords: criminal investigations, powers of lawyer, criminal proceedings

Guarantee the rights and freedoms as the accused and the victim, and other participants in the criminal process. One of these guarantees is the right of the victim to use the services representative. According to art. 58 CPC Ukraine victim in criminal proceedings may represent representative – a person who in the criminal proceedings is entitled to be a defender (attorney).

"Lawyer" as "advocacy" is derived from the Latin word *advocatus*, in turn derived from *advoco* – «invite» [1, c. 4]. As you can see, the root word is not clearly defined legal meaning. The fact that in ancient Rome as a complication law, citizens who had no special training, have been forced to seek help – invited to conduct cases in the court of people who have such training. These were lawyers.

According to current criminal procedural legislation of Ukraine defender is a lawyer who protects the suspect, accused, convicted, acquitted, the person whom provides for application

of compulsory medical or educational nature or a question about their use, as well as those regarding which the consideration is assumed issuance of a foreign country (extradition) (c. 45 CCP). Defender can not be a lawyer, details of which are not included in the Unified Register of Advocates of Ukraine or in respect of which the Unified Register of Advocates of Ukraine contains information about the suspension or suspension of the right to practice law.

It should be noted that by 16.11.2000., according to art. 44 of the Criminal Procedural Codex of Ukraine, defense counsel in a criminal case could be a lawyer. However 16.11.2000. Constitutional Court of Ukraine decision "in the constitutional appeal citizen Gennady Ivanovich Soldatov the official interpretation of the provisions of art. 59 of the Constitution of Ukraine, art. KPCU 44, p. 268, 271 of the Codex of Ukraine on Administrative Offences (right of free choice defender) "the provision of art. 44 KPCU was unconstitutional and the right to defense the suspect, accused or convicted persons were not only lawyers but also other professionals in law, as well as relatives of the mentioned individuals. Therefore, in accordance with art. 44 KPCU theoretically counsel in criminal proceedings is a person authorized as prescribed by law protect the rights and interests of the suspect, accused and convicted. Before the adoption of CPC of in 2012 counsel involved in a criminal case, admitted as attorneys and other professionals in law, who according to law may provide legal assistance. And this is only in theory. In practice defense in criminal proceedings that concerned the suspect, accused or convicted, allowed only lawyers. Other experts in the field of law to the criminal justice system allowed only if they talked about victims, witnesses and others.

Regulation of normative basis for the organization and operation of advocacy and the practice of advocacy in Ukraine is regulated by the Law of Ukraine "On Advocacy and legal practice" from 05.07.2012 №5076-VI (hereinafter - the Law) [2]. In this law, the following terms shall have the following meanings:

- Advocate is a person who carries out advocacy on the grounds and in the manner provided by this Act;

- Advocacy - independent professional activities of advocate for the implementation of security missions and to provide other types of legal assistance to the client.

Advocacy of Ukraine is non-self-governing institution, which provides protection, representation and provision of other types of legal assistance in a professional manner, and to decide questions of organization and activity of the advocacy in the manner prescribed by this Law. Advocacy of Ukraine that make up the all lawyers who have the right to legal practice.

In order to ensure proper implementation of advocacy, legal practice observance of the guarantees, protection of professional rights of advocates, to ensure a high level of professional lawyers and issues disciplinary action lawyers in Ukraine operates legal profession (article. 2 of the Act).

According to art. 6 of attorney can be an individual who has completed higher education in law, know the national language, has experience in the field of law for at least two years, passed the examination, took internships (except in cases established by this Law), took the oath of attorney to Ukraine and received a certificate of the right to practice law. Accordance with applicable law can not be a lawyer a person who:

- 1) has outstanding or run withdrawn convicted of a particularly serious crime and misdemeanor, for which was sentenced to imprisonment as prescribed by law;

- 2) recognized by the court as incapable or partially capable;

- 3) denied the right to practice law - within two years from the date of the decision to terminate the right to practice law;

- 4) released from a judge, prosecutor, notary of the public service or service in local government for breach of oath, committing corruption offenses within three years from the date of this release.

For the purposes of this article the terms used in the following interpretation:

1) complete higher legal education- University legal education received in Ukraine, and complete higher legal education received in foreign countries and recognized in Ukraine as prescribed by law;

2) experience in the field of law- experience of individuals specialty after obtaining her full higher legal education.

The Lower Council of Ukraine provides the Unified Register of Advocates of Ukraine and for the collection, storage, recording and providing reliable information on the number and the personal staff of Advocates of Ukraine, lawyers from foreign countries, which according to this law acquired the right to practice law in Ukraine, the organizations selected attorneys for legal practice. Adding information to the Unified Register of Advocates of Ukraine and carried council lawyers Regions and the Lower Council of Ukraine.

The Unified Register of Advocates of Ukraine and, in accordance with Art. 17 of the Act, made the following information:

1) the name and surname of a lawyer;

2) the number and date of issuance of the certificate of the right to practice law, the number and date of the decision to issue a certificate of advocacy (number and date of the decision to include an attorney of a foreign state in the Unified Register of Advocates of Ukraine);

3) the name and location of the organizational form legal practice, numbers communications;

4) address workplace lawyer numbers communications;

5) Information about the suspension or termination of the right to practice law;

6) other information required by this Act.

The address of workplace is the location chosen by lawyer in a lawyer organisation where he works. If you have multiple addresses employment lawyer in the Unified Register of Advocates of Ukraine registers only one.

The current law requires an attorney within three days of the change in information about themselves that are included or to be included in the Unified Register of Advocates of Ukraine, written notice of such changes Council advocates the region at your workplace, except if these changes are based on decision on qualification and Disciplinary Commission of Advocacy.

The information included in the Unified Register of Advocates of Ukraine is open on the official website of the National Association of The Lower Council of Ukraine and the relevant Council advocates regions provide extracts from the Unified Register of Advocates of Ukraine at the request of an attorney or other person. The order of the Unified Register of Advocates of Ukraine approved by the Council of Ukraine.

Therefore, the current CPC recognizes two types representative of the victim: defense legal representative. Thus, the legal definition of the term "defender" does not provide the identity of the victim in his list. In our opinion, it is not justified and needs to be clarified. In particular, in accordance with Art. 19 of types legal practice are:

1) the provision of legal information, advice and clarification of legal issues, legal support of businesses and individuals, state agencies, local governments, state;

2) drafting, complaints, proceedings and other legal documents;

3) protect the rights, freedoms and legitimate interests of the suspect, accused, convicted, acquitted, the person whom provides for application of compulsory measures of medical or educational nature or the question of their use in criminal proceedings, the person whom considers the issuance of foreign state (extradition), and the person which is summoned to administrative responsibility in the proceedings on administrative violation;

4) to provide legal assistance to the witness in criminal proceedings;

5) represent the interests of the victim in the proceedings on administrative violation, the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings;

6) represent the interests of natural and legal persons in courts in the exercise of civil, commercial, administrative and constitutional justice and other public bodies to individuals and legal entities;

7) represent the interests of individuals and legal entities, the state, state agencies, local governments in foreign and international courts, unless otherwise provided by the legislation of

foreign states, statutory instruments of international judicial bodies and other international organizations or international agreements, the importance of which given by the Verkhovna Rada of Ukraine;

8) to provide legal assistance during implementation and serving criminal sentences.

Lawyer may exercise other legal activities not prohibited by law. Therefore, in our opinion, the concept of defenders should include not only the identity of the suspect, accused, convicted, acquitted, the person whom provides for application of compulsory measures of medical or educational nature or a question about their use, and the person whom is supposed to consider the issuance of a foreign state, as well as the victim.

According to art. 20 of the law in the exercise legal practice lawyer has the right to take any action not prohibited by law, legal ethics rules and contract for legal assistance necessary for the proper performance of the contract for legal assistance, including:

1) apply with advocacy requests, including getting copies of documents to state agencies, local governments and their officers and employees, enterprises, institutions, organizations, associations as well as individuals (such consent individuals);

2) to represent and protect the rights, freedoms and interests of individuals, the rights and interests of legal persons in court, state authorities and local self-government, enterprises, institutions and organizations regardless of ownership, public associations, the citizens, public officials and officers, the powers which include resolving the issues in Ukraine and abroad;

3) inspect enterprises, institutions and organizations needed for legal practice documents and materials, except those containing classified information;

4) make statements, claims, petitions and other legal documents and file them in accordance with the law;

5) report petitions and complaints on admission to officers and employees in accordance with the law and get them motivated written responses to these requests and complaints;

6) to be present during the examination of their requests and complaints at meetings of collegial authority and give explanations on the merits of petitions and complaints;

7) to collect information about facts that can be used as evidence in a legal way to request, receive, and delete objects, documents, copies, get acquainted with them and interview persons with their consent;

8) use technical means, including a copy of the case, which protects attorney, representation or providing other legal assistance, to record proceedings in which he is involved and progress court hearing in the manner prescribed by law;

9) certify copies of documents for which he is, unless the law established a mandatory way other certificate copies;

10) to obtain written findings of specialists and experts on matters requiring specialized knowledge;

11) exercise other rights provided by this Law and other laws.

During the practice of advocacy lawyers should:

1) comply with the oath Ukrainian lawyer and legal ethics rules;

2) on request to report on the implementation of the agreement on legal assistance;

3) promptly inform the client of a conflict of interest;

4) improve their skills;

5) carry out the decisions of the legal profession;

6) perform other duties provided by law and contract for legal aid.

Under current law lawyer is prohibited:

1) use their rights against the rights, freedoms and legitimate interests of the client;

2) without the consent of the client to disclose information that lawyers' confidential and use them in their own interests or the interests of third parties;

3) take a position on the case against the wishes of the client, unless the lawyer is sure that the client is wrong;

4) refuse to provide legal assistance, except as required by law.

Therefore, the new legislation significantly expanded the list of rights lawyer towards ensuring the principle of adversarial.

According to part. 2 art. 58 Codex of Ukraine representative of the legal person, who has been the victim may be its leader, another person authorized by law or the constituent documents, an employee of a legal entity by proxy and a person who has a right to counsel in criminal proceedings. That is, CPC sentences protect victims entity not only a lawyer, and others [3].

Authorities of the representative to the victim in criminal proceedings confirmed:

1) a certificate of advocacy activities; by the order contract with defender or commission agency (agencies) authorized by law to provide free legal aid - if the victim's representative is a person who has the right to counsel in criminal proceedings;

2) a copy of the constituent documents of legal entity if the victim is a representative director of a company or other person authorized by law or the constituent documents to the person;

3) proxy representative if the victim is an employee of a legal person who is the victim.

Representative uses procedural rights of the victim, whose interests she represents, except for procedural rights, the implementation of which is made directly to victims and can not be assigned representative.

Installation of any additional requirements, in addition to presenting the defender document proving his identity, or the terms of office for confirmation or defender for his involvement in the criminal proceedings is not allowed.

However, it is obvious fact that such rights lawyer provided only specified persons. As a lawyer who represents the interests of the victim, they are significantly limited. This conclusion can be reached on the basis established in the Criminal Procedure Law of classification, according to which the suspect, accused of belonging to the defense and the prosecution to the victim.

So, the victim itself or through a representative (lawyer) as the prosecution has the right to apply for the examination only to the investigator or prosecutor.

Of particular note is the issue of qualified legal aid lawyer as suspect or the accused and the victim. Legislator justified imperative method applied in resolving this problem. According to part. 1 art. 58 CPC Ukraine victim in criminal proceedings may represent the representative that in criminal proceedings has the right to defense counsel. In Part. 1 art. 45 CPC defender is a lawyer.

Thus, an individual - the victim has the right to represent a lawyer, information is included in the Unified Register of Advocates of Ukraine and in respect of which do not contain information about the suspension or termination of the right to legal practice. But there are some exceptions. Representative of the legal person who is injured may be its leader, another person authorized by law or the constituent documents, an employee of a legal entity on behalf of. One should pay attention to the fact that the legislator in art. 52 CPC predicted binding lawyer, who is a lawyer in criminal proceedings for serious crimes. In other cases, mandatory participation of counsel in criminal proceedings require:

1) for persons suspected or accused of doing of a criminal offense under the age of 18 years;

2) the people who have been foreseen the use of coercive educational measures;

3) against persons who, because of mental or physical disability are not able to fully exercise their rights;

4) to persons who do not know the language the criminal proceedings;

5) for people who have been foreseen application of compulsory medical measures or the question of their use;

6) for the rehabilitation of the deceased. As can be seen, among these categories of persons not mentioned victim. Under the law, if the victim is a minor or a person recognized by law incapable or partially capable to participate in legal proceedings with her involved her legal representative. According to art. 44 CPC such persons may be parents (adoptive parents), guardians or carers, other adult relatives and family members and others. This indicates inequality professionalism of representing the interests of the defense and the prosecution. In our opinion, this category of persons in need of mandatory professional legal assistance.

As mentioned in para. 8 part. 1 art. 56 Codex of Ukraine, during the criminal proceedings the victim has the right to be represented and at any time resign from his cooperation. Under Part.

4.58CPC representative uses procedural rights of the victim, whose interests she represents, besides procedural rights, the implementation of which is made directly to victims and can not be assigned to a representative. Since the victim is entitled to compensation for damage to a criminal offense (clause. 10p.1 art. CPC 56), it is advisable to clarify the issue in the same way that a lawyer not only to prove the fact of damage, but also to determine its consequences for the victim, evaluate and justify appropriate evidence.

In Part. 2 art. 101, stipulates that each party to the criminal proceedings shall be entitled to provide the court with expert opinion, based on its scientific, technical or other specialized knowledge. Thus, this indicates that the lawyer representing the interests of the victim, may engage an expert to the examination on their own without coordination with law enforcement. In this case, confidentiality ensures that expert opinion reports side, which was carried out at the request of expertise (including. 9c.101). The provisions of this Article, the European standards of equality of arms in criminal proceedings. However, they are not reflected in art. 244 CPC, which requires substantial additions to standards on the rights of the victim as the prosecution, namely to appeal to the investigating judge and for examination at their own expense.

Competitiveness of the prosecution and defense supported by providing each party the right to go to court with a request to call an expert for examination during the trial to clarify or supplement its opinion (including. 7, Art. 101).

Exploring the provisions of the Criminal Procedure Codex of Ukraine, it should be noted that the legislature expanded powers of attorney to use special knowledge. However, this idea is not continuous, because they do not apply to the victim and his representative. Also, the law clearly defines that the investigating judge has the right to a defense attorney, if necessary, an examination, and are known to the defense as suspect, the accused. The victim also refers to the classification of the charges with the prosecutor, investigator and more. Such classification of subjects is accepted in criminal procedural law and justified famous scientists, including W. Shybiko, V. Kashepov, V. Tertyshnyk.

Analyzing the foregoing, it should be noted that the law provides recourse to the investigating judge of the prosecution (victim through his counsel) if it is impossible for examination at their own expense. Removing such procedural gaps requires implementation of the principle of equality of parties.

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«ЖИВЕ ПРАВО» Є. ЕРЛІХА ЯК ВІДПРАВНА ТОЧКА РОЗВИТКУ СУЧАСНОГО ПРАВОВОГО ПЛЮРАЛІЗМУ

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Аннотация. Стаття посвячена основателю социологического направления в юриспруденции Евгению Эрлиху, изложено правопонимание Эрлиха, особенности его мышления в контексте правового плюрализма. Этот тип мышления, который на данном этапе используется в Европе, наиболее эффективен во времена глобализации общества. Автор также исследует роль социологического подхода к праву Евгения Эрлиха в свете споров о правовом плюрализме.

Summary. The article is dedicated to Eugen Ehrlich, the founder of the sociological theory in jurisprudence. The article outlines Ehrlich's views on law, stresses the peculiarities of his thinking in the context of legal pluralism. That this type of thinking, also applied in Europe, has proven to be most effective in the times of the globalization of society. The author also questions the role of Eugen Ehrlich's sociological jurisprudence in contemporary debates about legal pluralism.