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JUDICIAL REPRESENTATION REFORM IN UKRAINE: INSTITUTIONAL INTERACTION BETWEEN THE BAR AND LEGAL CONSULTANTS

Abstract

This article examines the legal regulation of the professional powers of advocates and legal consultants in Ukraine in the context of the 2016 judicial reform and the introduction of the so-called “lawyer’s monopoly” on court representation. The study analyzes the constitutional and legislative framework governing advocacy, including the Law of Ukraine “On Advocacy and Legal Practice,” procedural codes, and subsequent amendments affecting the scope of professional representation. Particular attention is devoted to the delineation of competencies between advocates, who possess exclusive rights to judicial representation and criminal defense, and legal consultants, whose activities remain largely unregulated by a specialized legal framework.

The research identifies legislative gaps, inconsistencies, and practical difficulties arising from the reform, including transitional conflicts, challenges in confirming representative authority, and restrictions affecting corporate legal services. The article also explores doctrinal debates concerning the balance between ensuring high professional standards and preserving broad access to justice.

Based on systemic and comparative analysis, the author proposes directions for improving the regulatory model, including clearer institutional coordination, recognition of the professional status of legal consultants, and refinement of procedural norms. The study concludes that harmonization of professional roles is essential for strengthening legal certainty, professional accountability, and effective access to justice in Ukraine.

Key words: lawyer, legal consultant, legal regulation, professional powers, legal status, delineation of powers, interaction, legal profession, advocacy.

Introduction

In the current conditions of legal development in Ukraine, the problem of a clear delineation of powers between various entities providing legal assistance is becoming more urgent. First of all, we are talking about lawyers and legal consultants (legal advisors), who, although they pursue a common goal – legal protection of the interests of individuals and legal entities – are nevertheless in different legal regimes.

Currently, there are a number of regulatory, doctrinal, and practical inconsistencies that complicate effective interaction between lawyers and legal consultants, create uneven application of the law, and in some cases violate the principle of accessibility of legal aid, which requires a systematic analysis and development of recommendations for improving current legislation.

A lawyer in Ukraine is a lawyer with a special legal status, whose activities are regulated by a special law. According to the Law of Ukraine “On Advocacy and Legal Practice”, to obtain the status of a lawyer, one must have a higher legal education, work experience in the field of law for at least two years, successfully pass a qualifying exam, undergo an internship and take the Oath of a Lawyer of Ukraine. The law establishes the possibility of avoiding insanity (singles and types of activities that are unreasonable with the practice of law) and the prohibition of engaging in legal activity for certain categories of individuals.

A lawyer conducts his/her activities in the organizational forms established by law – individually, through a law firm or association. It is important that the advocacy is a self-governing professional community, and each lawyer must comply with the Rules of Lawyer Ethics, ensure lawyer confi-

dentiality, and improve his/her professional level. Violation of these obligations is subject to disciplinary action, up to and including deprivation of the right to practice¹.

In addition to duties, the law grants lawyers broader powers to provide legal assistance to clients. In particular, attorney-client privilege guarantees the confidentiality of relations with clients – the law expressly prohibits requiring lawyers or their employees to disclose such information. Another tool is a lawyer's request, to which state bodies and other addressees are obliged to respond, and for which ignoring liability is established². Appropriate guarantees provide the lawyer with special opportunities to gather information and protect the client's rights.

Unlike lawyers, the activities of legal advisors are not directly regulated by a special law. The term "legal consultant" usually refers to lawyers who provide legal advice, recommendations and guidance, prepare documents or work as lawyers (in the staff of enterprises or institutions), but have not received a bar certificate. To work as a legal consultant, it is enough to have a law degree. The law does not require additional certification or membership in a professional organization³.

Legal consultants are subject to general labor and civil law, rather than a separate professional law. Thus, legal consultants do not have a clearly defined regulatory status and professional restrictions, as lawyers do. They are free to choose their field of activity and combine legal work with other positions. However, the state does not provide them with any special professional rights or guarantees. In particular, information received by a legal advisor from a client is not protected by legal secrecy at the legislative level – to maintain confidentiality, such specialists can only conclude a separate non-disclosure agreement with the client. But even a confidentiality agreement does not provide the same level of protection that the law guarantees to a lawyer. A legal advisor also does not have the right to request a lawyer's request, so his ability to collect the information necessary for the case (evidence in the case) is limited compared to a lawyer.

An important difference between lawyers and legal consultants is the right to represent the interests of other persons in courts and to provide defense in criminal proceedings. The Constitution

of Ukraine (as amended after the 2016 judicial reform) established that "only a lawyer shall represent another person in court, as well as provide defense against criminal charges"⁴. That is, today only a lawyer (with some exceptions specified by law) can represent individuals or legal entities in courts of any instance and be a defense attorney for suspects/accused in criminal cases.

The relevant constitutional provision has defined the distinction: a lawyer is a subject of professional legal assistance who has the exclusive right to judicial representation, while other lawyers are deprived of such a general right. The relevant provisions are also reflected in the relevant law: representation of a client in court proceedings and before state authorities is explicitly defined as one of the types of advocacy activities⁵.

Thus, a lawyer in the legal system of Ukraine is a lawyer with an officially recognized status who has undergone special qualifications and received a certain "monopoly" on key aspects of legal aid (legal representation, defense in criminal proceedings). A legal consultant (legal advisor), in turn, is a specialist in the field of law without attorney status, who can advise, prepare documents, work in legal departments of enterprises, but is not endowed with special professional rights and guarantees and cannot fully represent the interests of another person in court (except when expressly permitted by law or when acting as a full-time representative of his institution).

Differences in legal status also determine the specifics of interaction: lawyers are subject to the control of the disciplinary bodies of the bar and have self-government, while the activities of legal consultants are controlled only by the employer or regulated by the terms of a civil law contract with the client.

The introduction of a "lawyer's monopoly" in Ukraine through the 2016 judicial reform marked a pivotal shift in the legal landscape, fundamentally altering the relationship between these two groups of legal professionals. This reform, implemented gradually until 2019⁶, aimed to align Ukraine with European standards by enhancing the quality and professionalism of legal representation⁷. However,

¹ Chym vidrizniaietsia advokat vid yurysta // S&P Partners. URL: <https://s-partners.org/uk/chem-otlachaetsya-advokat-ot-y> (accessed: 09.05.2025).

² Ibid. 1.

³ Ibid. 1.

⁴ Конституція України: Закон України від 28 червня 1996 р. № 254к/96-ВР // Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр> (accessed: 09.05.2025).

⁵ Про адвокатуру та адвокатську діяльність: Закон України від 5 липня 2012 р. № 5076-VI // Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/5076-17> (accessed: 11.05.2025).

⁶ Адвокатура України // Вікіпедія: вільна енциклопедія. URL: https://uk.wikipedia.org/wiki/Адвокатура_України (accessed: 11.05.2025).

⁷ Хто має право представляти інтереси особи у суді // Юридична газета. URL: <https://yur-gazeta.com/golovna/hto-mae-pravo-predstavlyati-interesi-osobi-u-sudi.html> (accessed: 11.05.2025).

er, its implementation has been complex, creating practical challenges, legal conflicts, and ongoing debates within the legal community about the optimal balance between ensuring high professional standards and maintaining broad access to justice¹. This article aims to analyze the evolution and current state of the division of powers between lawyers and legal consultants in Ukraine, examine the practical and doctrinal problems arising from the “lawyer's monopoly”, and propose recommendations for harmonizing their respective roles within the legal system.

Materials and Methods

The materials for this study comprise a comprehensive range of normative legal acts of Ukraine that define the legal status and scope of activity for lawyers and legal consultants. The primary sources include the Constitution of Ukraine², the Law of Ukraine “On Advocacy and Legal Activity”³, the Criminal Procedure Code⁴, the Civil Procedure Code⁵, the Commercial Procedure Code, and the Code of Administrative Procedure. The historical evolution of legal regulation was traced using foundational documents such as the Law of Ukraine “On Entrepreneurship”⁶. The analysis also incorporates key amendments introduced by the 2016 judicial reform, including the transitional provisions that governed the gradual implementation of the new rules⁷.

The doctrinal basis of the research includes scientific publications and academic works addressing the legal status of lawyers and the concept of the “lawyer's monopoly”⁸, as well as analytical re-

ports and position papers from professional bodies such as the National Association of Advocates of Ukraine⁹. To capture the ongoing legislative debates, the study also incorporates analysis of draft legislation, most notably the 2020 presidential bill aimed at abolishing the exclusive right of lawyers to representation¹⁰.

The methodological framework of the work is based on a combination of general scientific and special legal methods. The formal-legal method was used to interpret the content of legal norms defining the rights, duties, and guarantees of lawyers and legal consultants, as well as the exceptions to the general rule of representation. The historical-legal method allowed for the examination of the evolution of legal regulation from the early 1990s through the 2012 law to the present day, tracing the shift from a mixed system to a lawyer's monopoly. The comparative-legal method was employed to contrast the legal statuses of lawyers and legal consultants, and to contextualize the Ukrainian “lawyer's monopoly” within broader European practices. A systemic analysis was conducted to identify conflicts and gaps in the legislation and law enforcement practice, particularly those arising from the 2016 reform, its transitional provisions, and the subsequent attempts to modify the constitutional framework. Finally, the method of legal modeling was used to formulate proposals for improving the legislative framework governing the interaction between lawyers and legal consultants.

Results and Discussion

1. Evolution of the Legal Status of Lawyers and Legal Consultants

After the declaration of independence of Ukraine, the legal field for the provision of legal aid was only being formed. In 1991, legislation was in force that allowed legal practice on the basis of a state license: according to the Law of Ukraine “On Entrepreneurship”, legal services could be provided by persons with a legal education, having received a license from the Ministry of Justice¹¹. That is, in the early 1990s, it was possible for any law-

news/1750109/ (accessed: 12.05.2025).

⁹ Хто має право представляти інтереси особи у суді // Юридична газета. URL: <https://yur-gazeta.com/golovna/hto-mae-pravo-predstavlyati-interesi-osobi-u-sudi.html> (accessed: 11.05.2025).

¹⁰ Про судову практику забезпечення права на захист // Sa.dn.ua. URL: <https://sa.dn.ua/pro-sudovu-praktiku-zabezpechennya-pra/4/> (accessed: 11.05.2025).

¹¹ Коли адвокату доведеться підтверджувати своє право на подання скарги в інтересах клієнта. URL: https://protocol.ua/ua/koli-advokatu-dovedetsya-pidtvrdguvati-svoe-pravo-na-podannya-skargi_v_interesah_klienta (accessed: 12.05.2025)

¹ Про судову практику забезпечення права на захист // Sa.dn.ua. URL: <https://sa.dn.ua/pro-sudovu-praktiku-zabezpechennya-pra/4/> (accessed: 11.05.2025).

² Конституція України: Закон України від 28 червня 1996 р. № 254к/96-ВР // Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/254k/96-vr> (accessed: 09.05.2025)

³ Про адвокатуру та адвокатську діяльність: Закон України від 5 липня 2012 р. № 5076-VI // Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/5076-17> (accessed: 11.05.2025).

⁴ Criminal Procedure Code of Ukraine. (The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2013, No. 9–10, No. 11–12, No. 13, Article 88). URL: <https://zakon.rada.gov.ua/laws/show/en-sk/4651-17#Text> (accessed: 11.05.2025).

⁵ Civil Procedure Code of Ukraine (Reports of the Verkhovna Rada of Ukraine (VVR), 2004, Nos. 40–41, 42, Article 492. URL: [https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/68624/UKR-68624%20\(EN\).pdf](https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/68624/UKR-68624%20(EN).pdf) (accessed: 11.05.2025).

⁶ Law of Ukraine N 1807-III, June 8, 2000 “On Entrepreneurship”. URL: <https://faolex.fao.org/docs/pdf/ukr38312.pdf> (accessed: 11.05.2025).

⁷ Коли адвокату доведеться підтверджувати своє право на подання скарги в інтересах клієнта. URL: https://protocol.ua/ua/koli-advokatu-dovedetsya-pidtvrdguvati-svoe-pravo-na-podannya-skargi_v_interesah_klienta (accessed: 12.05.2025).

⁸ Судова практика: за відсутності адвоката // Верховний Суд України. URL: <https://supreme.court.gov.ua/supreme/pres-centr/>

yer to work as a “lawyer-entrepreneur” in the legal services market. At that time, courts also allowed a fairly wide participation of lawyers who did not have the status of attorneys: close relatives, legal representatives of the accused, as well as other persons with the permission of the court could act as defense attorneys in criminal cases. In fact, the institute of advocacy did not yet have a monopoly position – there were state and private legal consultancies, legal advisors at enterprises, and other specialists who provided legal assistance.

An important step in changing the relevant situation was the adoption on December 19, 1992 of the first special Law of Ukraine “On Advocacy” [1]. This law established the foundations of the legal profession in the new conditions and assigned it a leading role in ensuring the right of citizens to protection and legal assistance. For the first time, the status of a lawyer, the rights and obligations of persons practicing law, and the organizational forms of the legal profession were defined at the legislative level. Although this law gave a certain prestige to the legal profession, legal advisors continued to play a significant role in the 1990s. Many state institutions and enterprises had their own legal services, full-time lawyers who represented their interests in courts (mainly in commercial and civil disputes) on the basis of a power of attorney. Thus, in the first decade of independence, a mixed system developed: lawyers had a special status under the 1992 law, but there was no “monopoly” on representation – other lawyers could act alongside lawyers in legal proceedings.

On July 5, 2012, the modern Law of Ukraine “On Advocacy and Legal Activity” was adopted, replacing the 1992 law [2]. The new law introduced a single self-governing National Bar Association, detailed the rights, obligations, and guarantees of lawyers, introduced the institution of a lawyer's request, and established new rules for access to the profession. However, it did not directly regulate the status of other lawyers (non-lawyers), as before. At the time of the adoption of this law (2012), Ukrainian legislation still had “dual” regulation: on the one hand, the legal profession received an updated legislative framework, and on the other, procedural codes allowed representatives without a bar certificate to participate in civil and commercial proceedings. For example, until 2016, the Civil Procedure Code of Ukraine provided that any capable person who has reached the age of 18, with a duly certified power of attorney,

could be a representative in court¹. Similarly, legal entities could entrust the conduct of cases in courts to their in-house lawyers. In criminal proceedings, however, the law had already established stricter restrictions – since 2012, the Criminal Procedure Code has determined that only a lawyer can be a defense attorney², thereby consolidating the long-standing tradition that in criminal cases only a professional lawyer can defend the accused.

In the period 2012-2016, there were discussions on the advisability of granting the bar a “monopoly” on representation in courts. The legal community advocated a European approach, according to which high-quality legal assistance in courts should be provided by lawyers (due to their qualifications and accountability). At the same time, the business community and some academics warned that sharply restricting the right to representation by lawyers alone could complicate access to justice, especially for small businesses and citizens who are accustomed to trusting their legal advisors or relatives. These debates laid the groundwork for the constitutional changes that took place in 2016.

2. The 2016 Judicial Reform and the “Lawyer's Monopoly”

The judicial reform initiated in 2016 has significantly changed the balance of powers between advocates and other legal professionals. The Law of Ukraine “On Amendments to the Constitution of Ukraine (Regarding Justice)” introduced a provision that “a bar association shall operate in Ukraine to provide professional legal assistance” and, as stated above, only a lawyer represents another person in court and provides defense in criminal proceedings³.

The Final and Transitional Provisions of these amendments provided for a gradual implementation of the new rules of representation: the new constitutional requirement came into force in stages for different judicial instances. Thus, according to the reform, from January 1, 2017, only lawyers were entitled to represent the interests of individuals in the Supreme Court and courts of cassation;

¹ Верховна Рада проголосувала за скасування адвокатської монополії // Право.UA. URL: <https://pravo.ua/articles/verhovna-rada-progolosuvala-za-skasuvannja-advokatskoi-monopolii/> (accessed: 12.05.2025)

² Criminal Procedure Code of Ukraine. (The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2013, No. 9–10, No. 11–12, No. 13, Article 88). URL: <https://zakon.rada.gov.ua/laws/show/en-sk/4651-17#Text> (accessed: 11.05.2025).

³ Конституція України: Закон України від 28 червня 1996 р. № 254к/96-ВР // Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр> (accessed: 09.05.2025).

from January 1, 2018, this requirement extended to courts of appeal; and from January 1, 2019, to courts of first instance. Thus, from the beginning of 2019, only a lawyer (or a legal representative in cases specified by law) can represent a party in any court of general jurisdiction. At the same time, exceptions were defined, enshrined in both the Constitution and procedural legislation: without the status of a lawyer, representation in labor disputes, disputes regarding the protection of social rights, electoral disputes, as well as representation of minor cases and representation of minors or incapacitated persons by their legal representatives is allowed¹. These exceptions were intended not to unduly restrict access to justice in sensitive categories of cases.

In order to implement the constitutional changes, the parliament adopted new versions of the procedural codes (Civil, Commercial, Administrative) in 2017. They stipulate that only a lawyer or a close relative/guardian (for individuals who cannot conduct the case on their own) may be a representative in court. For example, Article 60 of the Civil Procedure Code, as amended after the reform, explicitly provided: from January 1, 2019, only a lawyer or legal representative shall represent interests in court. Similar provisions appeared in the Domestic Procedural Code (Article 28) and the Code of Administrative Procedure (Article 55).

At the same time, procedural codes introduced the concept of “self-representation”: an individual can represent his own interests (which is a natural law), and a legal entity can act through its leader or a member of the executive body authorized to act on his behalf (without a separate lawyer). This self-representation mechanism to a certain extent preserved the opportunity for enterprises to participate in court by their own employees, but only at the level of managers. A full-time legal adviser, who is not a lawyer, after 2019 could no longer represent the enterprise in court by proxy, unless he was formally part of the company's governing body.

The judicial reform of 2016 actually fixed the delineation of the spheres of activity of lawyers and other lawyers. Since then, lawyers have received exclusive powers in the judicial sphere – they have become the only ones who, on a professional basis, can represent principals in courts of all instances (with some exceptions), as well as

the only professional defenders in criminal proceedings. Legal consultants outside the bar were formally excluded from participation in litigation as representatives of third parties. Their activities after 2016 focused mainly on consulting, preparing documents, ensuring the legal work of organizations, that is, on extrajudicial aspects of legal assistance. The interaction between these two communities has changed: often legal advisers are now forced to cooperate with lawyers, concluding contracts with external law firms for representation in court, while internal legal departments prepare materials and case strategy.

There was a practice when experienced legal advisers of enterprises themselves acquired the status of a lawyer in order to continue to represent the interests of the employer in the courts. Some organizations have introduced positions related to the management team (for example, the director of legal affairs) to which qualified lawyers are appointed – this allows them to self-represent the enterprise in court without the involvement of outside lawyers².

Thus, the reform of 2016 significantly influenced the division of powers: lawyers became indispensable participants in lawsuits, and the role of other lawyers in courts was reduced to a minimum, which increased the importance of the bar, but at the same time posed new challenges to the legal services of enterprises and citizens seeking legal assistance.

3. Problems in Implementation and Law Enforcement

The introduction of a “lawyer's monopoly” in Ukraine took place in a relatively short time, which caused a number of problems in law enforcement, especially at the transitional stage.

First, there were conflicts between the new constitutional provisions and the current at that time procedural rules. Although the amendments to the Constitution came into force in September 2016, in practice a complete transition to representation by lawyers took place gradually until 2019. During this period, the courts sometimes interpreted the norms differently. Such inconsistency of judicial practice at the beginning of the reform created confusion for the participants in the processes.

Secondly, there were difficulties with confirming the powers of a lawyer. The new procedural

¹ Адвокат й одночасно найманий працівник: який розмір ЄСВ потрібно сплачувати // LIGA:ЗАКОН. URL: https://buh.ligazakon.net/news/229121_advokat-y-odnochasno-naymaniy-pratsvnyk-yakiy-rozmr-sv-potrбно-splachuvati (accessed: 13.05.2025).

² Скасування виключного права адвокатів на представництво у судах стане відступом від закріпленого в Конституції України європейського курсу // Національна асоціація адвокатів України. URL: <https://unba.org.ua/publications/4746-skasuvannya-viklyuchnogo-prava-advokativ-na-predstavnictvo-u-sudah-stane-vidstupom-vid-zakriplenogo-v-konstitucii-ukraini-evropejs-kogokursu.html> (accessed: 13.05.2025)

rules required that the lawyer confirm his authority with a legal aid agreement or warrant. In practice, at first there were questions whether only a copy of the lawyer's certificate was enough, or it was necessary to provide a warrant every time. The relevant issue was gradually clarified by judicial practice and amendments to the legislation (it was established that the contract or warrant are proper confirmations, and the court itself can additionally check the status in the Unified Register of Lawyers)¹. However, in the beginning there were cases when the consideration of cases was delayed due to formal shortcomings in the certificate of authority - for example, the absence of a warrant or its incorrect execution.

Thirdly, a certain problem was the organization of legal assistance for legal entities and authorities. If earlier the company could entrust the conduct of the case to its regular lawyer, then after 2019 it was necessary either to hire an outside lawyer, or to provide self-representation through the head. Many institutions are faced with the need to review the functions of their legal departments. There was a legal conflict: can a lawyer be a full-time employee of the enterprise and at the same time be considered an independent subject of advocacy? In practice, this issue was resolved through the conclusion of civil law contracts with lawyers or by bringing the status of legal adviser into line (some lawyers resigned and transferred to the bar, continuing to serve the same employer as external consultants). Administrative courts later clarified that a self-employed person-lawyer is not deprived of the right to work under an employment contract, that is, a lawyer can be an employee of the enterprise², which to some extent facilitated the situation: large companies began to require their legal advisers to obtain a lawyer's certificate and take them to the staff already as lawyers. However, this issue remained vaguely regulated by law, which created the risks of double taxation, issues with ERU, etc.

Fourth, it should be noted collisions in the application of exceptions to the "lawyer monopoly". The Constitution and laws provided for certain exceptions (labor disputes, social, minor cases, etc.), but the definition of a "minor case" or the

attribution of a particular dispute to labor is not always obvious. In the early years, reformed courts differently assessed whether a non-lawyer could be allowed in a particular case. Some attempts to circumvent the requirement ran into formalism: for example, if the representative mistakenly referred to the labor nature of the dispute, and the court considered the dispute civil – the power of attorney of the "non-lawyer" was recognized as improper, and the party was deprived of representation to involve a lawyer.

So, the first years after the introduction of the lawyer's monopoly highlighted a number of problems of practice: the inconsistency of old norms with new principles, the interpretation of transitional provisions by courts, organizational difficulties for companies and the risks of excessive formalism. These problematic points became the subject of attention of both judicial practice (decisions of Plenums of higher courts, legal positions of the Supreme Court) and professional discussions on further improvement of legislation.

4. Doctrinal Discussions and Legislative Fluctuations

In the legal community, there is still a discussion about the optimal limits of the activities of lawyers and other lawyers. Proponents of expanding the role of the bar emphasize that the monopoly of lawyers in the courts is a European standard designed to improve the quality of legal assistance and professionalism of representatives. According to the National Association of Advocates of Ukraine, in many European countries the exclusive right of lawyers to representation has been operating for decades. For example, in Germany and Austria, the policy of introducing a lawyer's monopoly began more than 50 years ago³. In general, from 48 European countries in 33 states, the lawyer has a monopoly on protection in criminal cases, and in 18 countries - also on representation in civil courts. Such figures are cited as an argument that Ukraine is moving in line with the pan-European trend, increasing the status of the bar. It is further emphasized that the Bar as a self-governing institution more effectively controls the quality of services and ethical behavior of lawyers than would be possible for disparate lawyers without uniform standards. Some scholars propose to consider the lawyer's monopoly as a guarantee of

¹ Професія юриста в сучасному правовому просторі // Вісник Ужгородського національного університету. Серія: Право. URL: <https://visnyk-juris-uzhnu.com/wp-content/uploads/2021/08/24.pdf> (accessed: 13.05.2025).

² Без адвокатської монополії: що зміниться для громадян і юристів // LB.ua. URL: https://lb.ua/pravo/2020/01/15/447193-bez_advokatskoi_monopolii_shcho.html (accessed: 13.05.2025).

³ Хто має право представляти інтереси особи у суді // Юридична газета. URL: <https://jur-gazeta.com/golovna/hto-mae-pravo-predstavlyati-interesi-osobi-u-sudi.html> (accessed: 11.05.2025)

the implementation of Article 59 of the Constitution (the right to legal assistance) and believe that all types of legal services related to representation should be provided by lawyers¹. In numerous scientific works on this issue, it is substantiated that the legal status of a lawyer should be understood as a combination of professional rights, obligations and guarantees established by law, and that only persons with such status have the appropriate level of responsibility to the client and the law².

Proponents of a more flexible approach criticize excessive monopolization. They note that the profession of a broad-based lawyer (legal adviser) should also have normative recognition. It is noted that the modern requirements of business and society require various legal services, and not all of them are associated with judicial representation. Legal advisers play a significant role in the corporate sector, in contractual work, in ensuring compliance with the law in the activities of companies. Scientists ask the question: should all practicing lawyers be forced to become lawyers, or is it better to develop mechanisms of cooperation between the Bar Institute and the Institute of Legal Consultants? Some experts proposed to introduce a separate professional self-governing organization or register of legal advisers in order to establish standards of qualification, ethics and responsibility for them, without forcing them to go through the entire procedure of access to the bar.

A separate area of discussion was the abolition of the lawyer's monopoly. In 2019-2020 the new political authorities of Ukraine initiated amendments to the Constitution to abolish the exclusive right of lawyers to representation. President Volodymyr Zelenskyy submitted the relevant bill, and on January 14, 2020, the Supreme Council of Ukraine previously approved it, supporting in the first reading the idea of removing from the Constitution the provision on "exclusively lawyer" representation.

The corresponding initiative received a rather different assessment in professional circles. Some lawyers (mostly from the business environment) congratulated her, pointing out that this would return flexibility in choosing a representative and eliminate unnecessary barriers to access to justice. Others – primarily the advocacy community and supporters of the "monopoly" – regarded the

abolition as a step back from the European course of Ukraine. They emphasized that such frequent changes in constitutional rules undermine the stability of the legal system: after all, the Constitutional Court in 2016 supported the lawyer's monopoly, and in a few years it was proposed to abolish it³ [6]. All this indicates the ambiguity of the issue even among legislators: there is a dilemma between ensuring high standards of legal assistance (through the institute of advocacy) and guaranteeing a wide choice of representative for citizens and organizations.

Scientific approaches to solving this dilemma differ. Some authors insist that the prestige and capacity of the bar should be increased, but at the same time the bar should become more open: to simplify access to the profession, to recognize the experience of legal advisers during the qualification assessment, etc. It is proposed, for example, to count the long-term successful activity of a legal adviser as confirmation of the practical experience necessary to obtain a lawyer's certificate in order to stimulate the professional integration of lawyers into the bar. Another approach is to create legal conditions for lawyers to cooperate with non-lawyers. Currently, the law prohibits a lawyer from engaging in professional activities in partnership with a non-lawyer, but a number of scholars believe that joint teams, where lawyers are responsible for judicial representation, and legal advisers for preparatory, advisory work, could increase the effectiveness of legal assistance. To this end, it is proposed to mitigate the relevant restrictions by allowing mixed law firms with a clear delineation of areas of responsibility. In general, the legal doctrine of Ukraine is currently looking for a balance between two models: the first is the bar as an exclusive professional channel for providing legal assistance in the courts; the second is a pluralistic system, where, along with lawyers, a certain part of the functions can be performed by other certified lawyers.

Consensus has not yet been reached, which is reflected in fluctuations in legislative policy. However, all parties agree that the main goal – to provide quality legal assistance and access to justice – should remain a priority for any changes.

An analysis of the current state of affairs shows the need for a subtle regulation of legislation in order to establish interaction between the bar and the institute of legal consultants and eliminate the identified problems.

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² Про судову практику забезпечення права на захист // Sa.dn.ua. URL: <https://sa.dn.ua/pro-sudovu-praktiku-zabezpechennya-pra/4/> (accessed: 11.05.2025)

³ Про судову практику забезпечення права на захист // Sa.dn.ua. URL: <https://sa.dn.ua/pro-sudovu-praktiku-zabezpechennya-pra/4/> (accessed: 11.05.2025)

Conclusion

In the context of modern challenges to law enforcement practice, it seems appropriate to raise the issue of legislative regulation of the legal status of legal advisers (legal advisers) as entities providing legal assistance outside the bar. Given the existing legal gaps and conflicts, it is worth considering the possibility of adopting a separate legal act or amending the current legislation in order to determine their role, legal status and limits of professional responsibility.

It seems expedient to establish at the legislative level the minimum qualification requirements for such persons (in particular, the availability of higher legal education, the relevant experience in the specialty), the introduction of ethical standards, as well as the possible creation of an official register of certified legal consultants. The introduction of such a register would not equate consultants with lawyers, but would give their activities some official recognition and lay the foundations for establishing clear standards of professional responsibility to clients.

In view of this, it would be advisable to give legal advisers a limited amount of quasi-lawyer powers in the extrajudicial sphere, in particular: the right to make advisory requests to state authorities and local self-government; duty of confidentiality (professional secrecy of the client) with the establishment of legal liability for its violation. Such a model would increase the level of confidence in legal services provided outside the legal profession, as well as promote constructive interaction of lawyers with in-house lawyers (for example, in the form of official involvement of consultants as assistants or experts in specific cases).

Practice shows that granting the head of the enterprise the right to self-representation is not always a sufficient mechanism for effectively protecting the interests of a legal entity in court. In this regard, it is advisable to amend the procedural legislation in order to expand the list of subjects of representation. In particular, enterprises should be allowed to delegate the right of representation to full-time legal advisers without mandatory acquisition of legal status, provided that such an employee meets certain criteria (availability of higher legal education, stay in labor relations with the enterprise). Such a rule could be enshrined as a special exception in the relevant procedural codes. If such a settlement contradicts the constitutional provisions, it may be necessary to clarify the concept of "a member of the executive body autho-

rized to act on behalf of a legal entity," expanding it to the heads of legal units, if such a provision is enshrined in the charter or other constituent document.

It is also important to legalize and stimulate institutional interaction between lawyers and legal advisers. At the level of subordinate normative legal acts (in particular, decisions of the Council of Advocates of Ukraine), it is advisable to develop standards for cooperation of lawyers with full-time lawyers of clients, clearly outlining the boundaries of responsibility: lawyer - for procedural strategy and actions in court; legal counsel - for the preparation of evidence, documents, legal position. In addition, it is worth considering the possibility of a limited partnership of lawyer associations with legal consultants, for example, by creating associated structures, consulting units or providing consultants with the right of an advisory vote within the framework of a lawyer's education. In a number of countries (for example, in the UK), such a model successfully functions on the basis of the distribution of functions between solicitors and barristers. Ukraine could adapt such a model to its legal realities, without undermining the principles of the Bar, but also without ignoring the potential of highly qualified lawyers outside its borders.

In parallel with legislative improvement, it is necessary to provide effective information and explanatory support. As practice shows, even effective legislative innovations can be leveled due to their ambiguous or erroneous interpretation by law enforcement entities. In view of this, it is important that the Supreme Court of Ukraine, the Council of Advocates of Ukraine and other relevant bodies develop unified approaches to the interpretation of controversial norms. Particularly relevant are the issues of confirming the powers of the representative, the mechanism for applying exceptions to the general rule on legal representation, as well as actions in case of loss of the status of a lawyer during the proceedings. It is advisable to include specialized training modules on modern aspects of representation and interaction between lawyers and legal consultants in the training programs for judges, lawyers, law enforcement officers and public administration.

Summarizing the above, it should be emphasized: further development of legislative regulation should be aimed at harmonizing the legal status of lawyers and legal consultants, while ensuring high standards of legal assistance. The presence of clear and balanced rules of legal coexistence and interaction of these subjects will contribute to the

realization of the right of each person to quality, accessible and effective legal support. Regardless of the chosen model – the preservation of the lawyer's monopoly or its mitigation – the primary

task of the legislator should be to guarantee professional responsibility, ethics, professionalism and proper communication between all subjects of legal activity.

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УКРАИНАДАҒЫ СОТТА ӨКІЛДІК ЕТУ РЕФОРМАСЫ: АДВОКАТУРА МЕН ҚҰҚЫҚТЫҚ КЕҢЕСШІЛЕР АРАСЫНДАҒЫ ИНСТИТУЦИОНАЛДЫҚ ӨЗАРА ӘРЕКЕТТЕСТІК

Аңдатпа

Мақалада 2016 жылғы сот реформасы және сотта өкілдік етуге қатысты «адвокаттық монополияның» енгізілуі жағдайында Украинадағы адвокаттар мен құқықтық кеңесшілердің кәсіби өкілеттіктерін құқықтық реттеу мәселелері қарастырылды. Зерттеу аясында адвокаттық қызметті реттейтін конституциялық және заңнамалық негіздер, соның ішінде Украина Республикасының «Адвокатура және адвокаттық қызмет туралы» Заңы, іс жүргізу кодекстері және кәсіби өкілдік ету аясын айқындайтын кейінгі өзгерістер талданды. Ерекше назар сотта өкілдік ету және қылмыстық істер бойынша қорғау құқығына айрықша өкілеттіктері бар адвокаттар мен қызметі арнайы заңнамалық реттеумен толық қамтылмаған құқықтық кеңесшілер арасындағы құзыреттерді шектеу мәселесіне аударылды.

Зерттеу барысында реформаны іске асыру үдерісінде туындаған заңнамалық олқылықтар, қайшылықтар және практикалық қиындықтар, соның ішінде өтпелі кезеңдегі коллизиялар, өкілдік өкілеттіктерді растау мәселелері және корпоративтік заң қызметіне қатысты шектеулер айқындалды. Сондай-ақ кәсіби стандарттардың жоғары деңгейін қамтамасыз ету мен сот төрелігіне кең қолжетімділікті сақтау арасындағы теңгерімге қатысты доктриналық пікірталастар талданды.

Жүйелік және салыстырмалы-құқықтық талдау негізінде автор құқықтық реттеу моделін жетілдіру бағыттарын ұсынады, атап айтқанда институционалдық үйлестіруді нақтылау, құқықтық кеңесшілердің кәсіби мәртебесін тану және іс жүргізу нормаларын жетілдіру. Зерттеу кәсіби рөлдерді үйлестіру құқықтық айқындылықты нығайту, кәсіби жауапкершілікті арттыру және Украинада сот төрелігіне тиімді қолжетімділікті қамтамасыз ету үшін маңызды деген қорытындыға келді.

Түйінді сөздер: адвокат, құқықтық кеңесші, құқықтық реттеу, кәсіби өкілеттіктер, құқықтық мәртебе, өкілеттіктерді шектеу, өзара әрекеттестік, заңгерлік кәсіп, адвокатура.

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РЕФОРМА СУДЕБНОГО ПРЕДСТАВИТЕЛЬСТВА В УКРАИНЕ: ИНСТИТУЦИОНАЛЬНОЕ ВЗАИМОДЕЙСТВИЕ АДВОКАТУРЫ И ЮРИДИЧЕСКИХ КОНСУЛЬТАНТОВ

Аннотация

В статье исследуются вопросы правового регулирования профессиональных полномочий адвокатов и юридических консультантов в Украине в контексте судебной реформы 2016 года и введения так называемой «адвокатской монополии» на представительство в суде. В рамках исследования анализируются конституционные и законодательные основы регулирования адвокатской деятельности, включая Закон Украины «Об адвокатуре и адвокатской деятельности», процессуальные кодексы, а также последующие изменения, повлиявшие на объем профессионального представительства. Особое внимание уделяется разграничению компетенций между адвокатами, обладающими исключительным правом на судебное представительство и осуществление защиты в уголовном процессе, и юридическими консультантами, деятельность которых не урегулирована специализированным законодательством в полном объеме.

В работе выявлены законодательные пробелы, противоречия и практические сложности, возникшие в процессе реализации реформы, включая переходные коллизии, проблемы подтверждения полномочий представителя, а также ограничения, затрагивающие корпоративные юридические службы. Рассматриваются также доктринальные дискуссии относительно соотношения обеспечения высоких профессиональных стандартов и сохранения широкой доступности правосудия.

На основе системного и сравнительно-правового анализа автор предлагает направления совершенствования модели правового регулирования, включая уточнение институционального взаимодействия, признание профессионального статуса юридических консультантов и совершенствование процессуальных норм. Делается вывод о том, что гармонизация профессиональных ролей является необходимым условием укрепления правовой определенности, повышения профессиональной ответственности и обеспечения эффективного доступа к правосудию в Украине.

Ключевые слова: адвокат, юридический консультант, правовое регулирование, профессиональные полномочия, правовой статус, разграничение компетенций, взаимодействие, юридическая профессия, адвокатура.