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IMITATION OF LAWYER ACTIVITY AS MORAL PROBLEM OF DESTRUCTIVE LAWYER PRACTICE

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Abstract. In this research the solvency of lawyer activity in moral aspect is analyzed. As one of the most destructive tendencies of the modern practice exerting negative impact on reputation of legal profession and trust of society the problem of imitation of lawyer activity is considered. Proceeding from practice of a conventional attitude of lawyers to rendering legal aid to citizens, signs and negative manifestations of a phenomenon of imitation of lawyer activity come to light, factors of its determination reveal. The methodological basis of a research was made by sociological approach and a legalistic method. As a result of a research regularities of destructive practice of imitation of lawyer activity are revealed and preventive mechanisms of its overcoming are offered. For ensuring efficiency of activity of lawyers optimization of a subject of the lawyer contract as a specification of its provisions is offered. Preventive value of the principles and standards of lawyer ethics in formation of a conscientious attitude of lawyers to the professional status and the carried-out duties is shown. Need of monitoring by Chambers of Advocates of quality of activity of lawyers is satirized. Objectively demanded measures of counteraction to system factors of development of legal profession which provoke destructive manifestations of subjective properties of the identity of the lawyer are formulated. The research forms a theoretical basis of updating of mechanisms of counteraction to attempts of imitation of lawyer activity.

Keywords: destructive lawyer practice, imitation of lawyer activity, factors of imitation of lawyer activity, counteraction of imitation of lawyer activity.

Introduction. Modern lawyer practice is not deprived of the contradictory tendencies which are negatively affecting the authority of legal profession and trust of citizens to lawyers. One of the most contradictory tendencies of modern development of legal profession is expressed in substitution of highly skilled lawyer activity by its imitation by some part of lawyer community in the course of rendering lawyer services. Imitation of lawyer activity has negative consequences for citizens principals, doing harm to their rights and legitimate interests. Such form of behavior contradicts the socially important nature of lawyer activity; however a subject of legal regulation is not. From this point of view formation of idea of essence of this phenomenon in moral aspect, factors of determination and preventive mechanisms of counteraction to its negative manifestations is represented urgent.

Maintenance of a problem situation and methods. Lawyer activity has exclusive value in law-enforcement realization of the rights and legitimate interests of citizens. The major public function - rendering the qualified legal aid to citizens is assigned to legal profession. "In the person the lawyer <<http://1-24.ru/>> and society as if gives to the defendant a helping hand" [1, 190]. However in development of lawyer activity there are a lot of system problems. One of them finds expression in imitation of the lawyer activity acting as a common denominator of destructive manifestations of immoral behavior of some part of representatives of lawyer community. In jurisprudence of the special researches devoted to a problem of imitation of lawyer activity in moral aspect is not available. Meanwhile, this phenomenon is characterized by the disruptiveness. Unfortunately, lawyers provide a set of reasons for complaints to insolvency of the legal aid given them. "Typical complaints of clients to lawyers consist that the lawyer did not present the cost of possible costs initially; could not prepare the document for the client; prepared the document which is not meeting the requirements or seriously was late with terms of preparation of the written document" [2,7]. Clients complain of those lawyers who establish the cost of the services in such size which considerably exceeds their real expression in lawsuit [3, 182]. Besides the above-mentioned, among complaints of the client to lawyers claims for excessive hourly quotations and operation of the agreement "also appear there is no victory - there is no remuneration" [4,145].

For definition of imitation of lawyer activity it is necessary to mark out its characteristic features and manifestations. Imitation of lawyer activity finds the expression in negative manifestations of immoral behavior of the lawyer. We are inclined to carry to them those forms of lawyer behavior which are characterized by a conventional attitude of the lawyer to the duties. To one of the most widespread manifestations of imitation of activity of the lawyer it is expressed in obviously conventional attitude to writing of lawyer complaints and petitions. The formal complaint is, as a rule, the complaint made only for creation of visibility of its preparation as it enters the maintenance of duties of the lawyer. Disruptiveness of the formal complaint is that to her addressees, for example court, an opportunity to make on it obviously formal answer - the formal reply is given. Meanwhile, the lawyer accepts an assignment for rendering legal aid for the benefit of the principal which protection act as criterion of quality of lawyer activity. And if for the complaint there is an occasion, then it has to be satisfied. Therefore, it has to be prepared properly. If the complaint cannot be satisfied because of her insufficient or weak argument, then such complaint does not make sense. Therefore such complaint is formal and the refusal in its satisfaction has to have legal consequences for the lawyer for non-execution of obligations to the client. However there is the following problem. Conclusion of agreement between the lawyer and the principal is carried out by rules of the civil contract at which violation, the consumer, as we know, has an opportunity to dissolve the contract and to demand a full recovery of losses. Meanwhile according to the legislation of the European states, lawyer activity is not enterprise, and the principal is not a consumer of service. In our opinion, such contradiction in the status of lawyer activity acts as one of the system factors provoking the lawyer to a conventional attitude to the duties. Nevertheless, the question of partial return of the fee as it is represented can be settled at the level of negotiations of the principal with the lawyer or Chamber of Advocates. In this aspect the Code of ethics and the oath of the lawyer act as the preventive mechanism of protection and restoration of the rights of the principal. But it, in our opinion, is possible provided that, first, in the contract the relevant provision on responsibility of the lawyer for inadequate fulfillment of duties is specified. Secondly, the provision of the contract on its subject has to be developed regarding the specific actions of the lawyer and their result corresponding to the cost of lawyer remuneration. Experience shows that "clients, most likely, will complain of the cost of services of the lawyers and costs of them, than of any other questions and problems" [5, 57].

The moral aspect of a problem of adequacy of lawyer activity most sharply proves in practice of protection on criminal cases where "the majority of criminal cases are conducted by lawyers formally, without due diligent protection which is necessary in criminal cases as business concerns freedom of the person" [6]. The aspiration to bigger profitability causes interest in the bigger number of contracts. It also explains a conventional attitude of many lawyers to given legal aid. Really, to develop effective strategy and tactics of protection of the rights and legitimate interests of the principal considerable time is necessary. Meanwhile, lawyers "conduct at the same time till 50-60 affairs and sometimes just sign the papers brought by the investigator without protecting interests of the clients" [6]. The chronic lack of time is followed by transfers of investigative actions or court sessions with their participation. This vicious practice shows transformation of lawyer activity into business clearly, proving as one of forms of imitation of activities for rendering lawyer services. Obviously, need for systematic control by Chambers of Advocates of observance of the ban on acceptance by the lawyer of instructions for rendering legal aid for obviously bigger quantity ripened, than he is able to execute. It is possible to refer to manifestations of imitation of lawyer activity also passive participation of the lawyer in investigative actions or court sessions. Passivity of the lawyer can be expressed in such forms of behavior as: lack of its due reaction to violations of the rights and legitimate interests of the principal; leaving of the solution of the questions infringing on legitimate interests of the principal to the discretion of court; presence at court session as the supernumerary of the lawyer or his assistant. Passivity will take place and in cases when the lawyer does not declare the petition, does not do remarks on violation of procedures, signs procedural acts, especially without pressing in their contents.

Thus, the problem of the moral choice in lawyer practice is accompanied by own material interests of the lawyer, care of material welfare that causes need of ensuring balance of interests of the lawyer, corporate interests of legal profession and the citizen - the principal. Otherwise, as fairly noted M.Y. Barshchevsky, if "the lawyer starts caring only for own material welfare, at this moment the legal profession as socially significant public institute will stop the existence" [7]. In our opinion, this balance is set by system of legal and moral coordinates which, in our opinion, has to be provided with the corresponding control from Chambers of Advocates. Rather common form of immoral behavior of the lawyer is the noncritical relation to biased charge of the client. Cause bewilderment of attempt of certain authors to

argue on morality in cases when the lawyer, proceeding from validity of fault of the principal, associates with a position of the state charge. "Being guided by the moral principles, - L.D.Kokorev notes, - the lawyer cannot <...> arrive against the conscience and internal belief. <...>, if during the investigation, judicial examination the lawyer came to a conclusion that the guilt of the defendant is ascertained" [8, 176]. Unfortunately, such practice has character not of an exception, and resistant tendency. In this regard we cannot but note that the lawyer's obligation for rendering legal aid cannot be put into dependence on establishment of fault of the principal. Besides, to the lawyer, however, as well as to the prosecutor, it is necessary to be guided by a presumption of innocence at all stages of consideration of criminal case, including cassation instance and to remember that, according to the legislation, purpose of criminal legal proceedings not only protection of the victim, but also defendant, defendant against illegal charge and condemnation. In legal regulation of lawyer activity there are systems, organizational and legal prerequisites - the factors determining his unfair and irresponsible behavior. Activity of the lawyer is in the mode of full self-government, independence, corporationism and certain closeness of a lawyer profession. They are designed to provide the solution of the tasks facing legal profession, and cannot be used in a contradiction to purpose of lawyer activity, to the detriment of the rights and legitimate interests of principals. At the same time autonomy, the free mode of lawyer activity, its self-sufficiency and lack of the state control create conditions for any temptation the temptations determining abuses of the lawyer status.

In such measurement lawyer activity is very poorly protected from destructive consequences which are not captured by legal regulation. In this regard updating of professional ethics of the lawyer which requirements have the status of rules of law is important and supplement the general standard legal regulation of lawyer activity. Imitation of lawyer activity is caused not only by organizational and legal, but also subjective factors. However subjective factors express themselves precisely in the conditions of the existing organizational and legal environment. From this point of view it is possible to believe that the problem of imitation of lawyer activity is and a problem of personal characteristics of lawyers. The British scientist-lawyer Kim Ekonomayds expressed fair opinion that "lawyers always have to find what will motivate them at execution of the duties" [10, 392]. It is represented that such positive qualities as honesty, the conscientiousness, responsibility forming a basis of lawyer professionalism are the integral elements of positive installation of the lawyer and can be hardly shaken under the influence of the above-stated organizational and legal factors - provokers. In this aspect as the key reason of imitation of activity, in our opinion, it is possible to consider professional incompetence of the lawyer. The highly skilled lawyer who is competently making documents and controlling implementation of procedures of legal proceedings has professional interest - to value the reputation and will hardly risk it. Anyway, but the minimum quantitative index of the affairs which are in production of such lawyer, in our opinion, is compensated by a quality indicator of its conscientious activity.

As other important factor promoting imitation of lawyer activity legal lack of information of citizens - principals concerning the maintenance of a subject of lawyer activity acts. The principal, owing to lack of legal knowledge of a being of the questions relating to maintaining the lawyer who is not able to subject audits quality of lawyer acts - documents or the procedural actions made by the lawyer on preliminary investigation or within judicial proceedings of business. For this reason the lawyer in the absence of effect of the activity, in most cases, has no reason not only for explanations and the report before the principal, but also apologies. As a last resort, at emergence of questions at the principal, the lawyer can resort to phrases: "we were not lucky with the judge ...", "I am not a god ...", etc. Even at condemnation of the client with application of the prescribed maximum penalty prescribed by the sanction of the relevant article of the criminal law, the lawyer is not burdened by neither moral, nor financial responsibility to the principal.

Results and discussion. The analysis of a problem allowed marking out the following regularities.

In practice of disciplinary production violations of the moral bases of lawyer activity provided by the Code of ethics and the oath of the lawyer prevail. Many of the lawyers who underwent disciplinary punishment including the termination of the lawyer status, without having attached adequate significance to the oath of the lawyer and the Code of ethics at the beginning of lawyer career, remember existence of lawyer ethics only by consideration of the complaints which arrived on them. Therefore, there is a need of systematic scheduled maintenance of Chambers of Advocates with lawyers on control of respect for lawyer ethics. The organizational and legal beginnings of monopoly of lawyer community for representation of interests of the principal in criminal legal proceedings exclude competitiveness and commitment to excellence in the legal environment, promoting formation of installations on the noncritical relation to performance of obligations that, eventually, provokes activity imitation. At the same time it should be noted as regularity that under the influence of the provocative organizational and legal environment vicious qualities of the identity of the lawyer "work". In this regard every possible development of alternative institute of the legal protection represented by law firms neutralizing side effect of organizational and legal conditions of development of legal profession is represented urgent.

In the context of the counteraction to a problem of dishonesty and irresponsibility of lawyers stated to one of the major factors, in our opinion, the exacting and critical relation of citizens - principals to quality of given legal aid can act.

Considering preventive mechanisms of overcoming imitation of lawyer activity it is necessary to stop also on value of obligatory insurance of lawyer activity on which pin hopes on protection of lawyer activity against risks of inadequate execution of lawyer activity. It is necessary to notice that a subject of insurance are the lawyer's mistakes, but not obviously unfair relation to duties. On the other hand, the wide range of insured events provided by the law on insurance, in our opinion can cause boomerang effect - to provoke negligence, negligence of lawyers at implementation of lawyer activity. In this aspect insurance can become the catalyst of abuses as can create illusion of the security from property claims of the injured principal provoking reproduction of imitation of lawyer activity.

Summary. On the basis above stated it is possible to conclude the following. First, imitation of lawyer activity becomes possible in the conditions of action of system, organizational and legal factors of development of legal profession which provoke destructive manifestations of subjective properties of the identity of the lawyer, such as formalism, dishonesty, passivity and irresponsibility in relation to citizens - principals. Secondly, for assessment of efficiency of lawyer activity it is expedient to concretize provisions of the contract on rendering legal aid. Thirdly, protection legal profession on criminal cases every possible development of alternative institute of legal protection represented by law firms is represented to one of preventive mechanisms of counteraction of imitation of lawyer activity and neutralization of side effect of monopolization. In - the fourth, as monitoring of quality of lawyer activity and counteraction to attempts of its imitation objectively demanded for Chambers of Advocates the following measures are represented expedient:

- systematic synthesis of lawyer practice regarding efficiency of activity of lawyers;
- the constant accounting of quantity put, the lawyers who are at the same time in production, for an exception of unproductive load of lawyers;
- concerning careless lawyers imputation of target figures by the number of admissible criminal cases in their production is expedient.
- implementation of periodic certification of lawyers on knowledge of requirements of standards of lawyer ethics;
- promoting of preventive value of the Code of ethics among clients of legal profession;
- inclusion in a duty of lawyers to acquaint the principal with the text of the Code of ethics before the conclusion of the contract.

Conclusion. The research forms a theoretical basis of updating of preventive mechanisms of counteraction to attempts of imitation of lawyer activity.

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IMPLEMENTATION OF THE SELECTIVE STRATEGY OF STATE REGULATION OF THE LABOUR MARKET IN TERMS OF MONOPROPELLANT SITE (ON EXAMPLE OF THE CHISTOPOLSKY MUNICIPAL AREA)

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Abstract. The article is devoted to the implementation of selective (mixed) strategy of state regulation of the labor market in terms of monopropellant areas, involving constant monitoring of the labor market areas, the adoption of operational measures in the field of reducing unemployment and increasing employment, as well as selective screening