

ppi 201502ZU4645

Publicación científica en formato digital

ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185

Depósito legal pp 197402ZU34



# CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"  
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia  
Maracaibo, Venezuela



Vol.40

Nº 75

2022

# Systems of Advocates' Self-Governance Bodies in European Union Countries

DOI: <https://doi.org/10.46398/cuestpol.4075.36>

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## Abstract

The purpose of the article was to study the experience of self-governance of lawyers in the countries of the European Union EU. On the basis of this material recommendations aimed at improving the advocacy system are provided. Achieving the set goal involved the resolution of the following tasks: a) to reveal the mechanism of functioning of the system of self-government of lawyers in the EU countries and identify its universal features, and; b) to determine the main models of the system of self-government of lawyers in the EU countries. The scope of the study was constituted by public rules, regulated by law, arising in the provision of legal services in the application of the legal profession and the implementation by representatives of its bodies of the right to self-government. The methodological basis of the study consists of general and specific research methods. It is concluded that, the manifestation of the principle of independence of the legal profession and the guarantee of full functioning of the self-governing bodies of bar associations in the EU countries consists in ensuring the freedom of their activities within the legality and its implementation in practice.

**Keywords:** self-governance activity; advocacy bodies; EU Member States; self-governance model; lawyers' monopoly.

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## Sistemas de órganos de autogestión de los abogados en los países de la Unión Europea

### Resumen

El propósito del artículo fue estudiar la experiencia de autogobierno de los abogados en los países de la Unión Europea EU. Sobre la base de este material se proporcionan recomendaciones destinadas a mejorar el sistema de defensa. La consecución del objetivo fijados implicó la resolución de las siguientes tareas: a) revelar el mecanismo de funcionamiento del sistema de autogobierno de los abogados en los países de la UE e identificar sus características universales, y; b) determinar los principales modelos del sistema de autogobierno de los abogados en los países de la UE. El ámbito del estudio lo constituyeron las normas públicas, reguladas por la ley, que surgen en la prestación de servicios jurídicos en la aplicación de la abogacía y la aplicación por los representantes de sus órganos del derecho al autogobierno. La base metodológica del estudio consiste en métodos de investigación generales y específicos. Se concluye que, la manifestación del principio de independencia de la profesión de abogado y la garantía del pleno funcionamiento de los órganos de autogobierno de los colegios de abogados en los países de la UE, consiste en garantizar la libertad de sus actividades dentro de la legalidad y su aplicación en la práctica.

**Palabras clave:** actividad de autogobierno; órganos de defensa; Estados miembros de la UE; modelo de autogobierno; monopolio de abogados.

### Introduction

The relevance of the study is beyond doubt in connection with Ukraine's obtaining the status of a candidate for EU membership and the need to develop such a system of bar self-government in our country in accordance with European standards, which would ensure further development of democracy and guarantee the rule of law.

In 2013, the Law of Ukraine "On Advocacy and Advocacy Activity" was adopted, which regulates the basic principles of organization and functioning of the advocacy system in Ukraine, the rights and obligations of its representatives (Law of Ukraine "On Advocacy and Advocacy Activity", 2013). In 2017, the Rules of Advocate's Ethics were approved, which establish binding rules of professional conduct for advocates based on the traditions and customs of the national bar, as well as international standards and rules of the legal profession (Rules of lawyer ethics, 2017).

However, it is necessary to note the fact that, despite the positive changes in the system of advocacy in Ukraine in recent decades, the level of provision of legal services by its representatives remains average and not effective enough, which is recognized as the citizens of our country, the direct consumers of such services. This problem is relevant to guaranteeing the quality of legal services and the state authorities, and the legal community itself. This problem is relevant with regard to guaranteeing citizens their right to defense, provided by the Constitution of Ukraine, in addition, military aggression against Ukraine and other negative socio-economic phenomena in our country, such as the spread of coronavirus infection and the pandemic has forced us to notice deepening inequalities and has generated troubling questions *oits causas*, and who and what can be sacrificed in a pandemic (O'Donovan, 2020).

The further improvement and development of advocacy self-governing bodies is also affected by the fact that in the past year there is an unsustainable interest in studying the results of identification, but a limited attitude will work in the role of public opinion (Rasmussen *et al.*, 2017), which does not give a real picture of the functioning of the advocacy system in Ukraine in general, highlighting its shortcomings and fix them.

The main problem in the sphere of lawyers' self-governance is that in Ukraine one can observe the double standard of this type of legal profession. We are talking about the fact that some of the lawyers practicing and being lawyers are dependent on corporate legislation when it comes to lawyers' associations, while the other part of the lawyers' community are self-employed persons, working individually and, accordingly, free from the requirements of the said legislation.

Given this fact and the fact that market services provided by lawyers in Ukraine is decentralized and is not subject to control either by the state or by advocates' corporate governance (Vilchik *et al.*, 2021), lawyers' self-governing bodies in Ukraine need to comply with the standards of European Community regulations, in particular the Common Code of Conduct for European Lawyers (Code of Conduct for European Lawyers, 1988).

There is also an obvious need to update national legislation in accordance with modern international patterns of advocacy, as well as the participation of representatives of the legal community in the post-war reconstruction of Ukraine after the end of the armed aggression against it, in a particular implementation of their provision of quality and effective legal assistance to the population of our state to protect their rights and freedoms, guaranteed by Art. 55 of the Constitution of Ukraine (Constitution of Ukraine, 1996), cause the need and relevance of the study of the organization and functioning of lawyers self-government in the EU, whose member countries have provided the institution of lawyers new content at the present stage and turned it into a universal instrument of legal assistance to consumers of such legal services.

## **1. Theoretical Framework or Literature Review**

It should be noted that a number of scientific works of domestic and foreign scholars and legal practitioners are devoted to the study of the issues of advocates' self-government. The study of the issues of the outlined problems is relevant, in particular, to clarify the new legal realities in which the advocacy is carried out in the EU countries, as well as to analyze the achievements in the field of the right to self-government, which is implemented by its bodies and representatives.

For example, N.I. Bochulyak, taking into account the requirements of the modern social world and the rapid development of information and communication technologies, the need to adapt the profession of a lawyer to the new realities of his work, has studied the ethical and deontological aspects of the behavior of a lawyer in social networks.

In the scientific work, the lawyer-practitioner concludes that it is necessary to amend the Rules of lawyer ethics and the Law of Ukraine "On Advocacy and Advocacy Activity", namely, the exclusion of norms in the said legal acts, which may lead to a broad interpretation of lawyer conduct in disciplinary practice when a lawyer uses social networks in carrying out his professional activities and outside of it (Bochulyak, 2019). Y. Beck devoted her scientific work to the study of the problems of lawyers' self-government, noting that it is a state-guaranteed right of the legal profession to independently decide the organization and activities of the legal profession in accordance with the Law of Ukraine on Advocacy and Advocacy Activity (Beck, 2022).

Regarding the scientific works of foreign scholars, it should be noted that they have studied the lawyers' self-government in a fragmented way, certain aspects of this system while studying general issues of lawyer's professional activities.

Thus, J. Courvoisier (2017) studied the procedure of interrogation of suspects in Switzerland, the scientist also notes the role of a lawyer, his compliance with professional ethics, and moral and ethical standards during this procedure. Ganner (2015) devoted his research work to the study of the changes that took place in the legislation of Austria, which concerned the issues of limiting the lawyer's monopoly, he notes that this reform left intact the privileges of lawyers, which were provided by the local system of lawyer self-government.

Boni-Le Goff (2020), who in her study on the gender characteristics of the legal profession is a relevant research topic because, as the research indicates, "serial mediation analysis demonstrated that, compared with other-advocating women, other-advocating men were calculated to dainty activities that were based on the lack of competence of what is

extremely great to big penalties” (Bosak *et al.*, 2018: 159), also examines also the reasons for the change in the profession by lawyers in France and Switzerland, stresses the importance of matching the moral personality of the lawyer according to the position he or she holds.

## **2. Methodology**

The methodological basis of the study consisted of general and special legal methods. To achieve the goals and objectives of the study the methods of analysis, synthesis, generalization, induction, deduction was used. Also, the comparative legal method was used. Combination of methods of research allowed to achieve its goals and objectives.

## **3. Results**

With the creation of a new, supranational formation of the European Union, the formation of a new type of state, the innovative institute of advocacy in its member states begins to form. On the one hand, it preserves its traditional function, is an integral part of the civil society of the European community, a means of ensuring state guarantees for the realization of constitutional rights to legal assistance, on the other hand, it is a peculiar, specific element of the EU legal system, given its organizational structure and distribution of competences between it and its member states.

The modern period of development of the legal profession in the EU countries can be characterized by a great diversity of its institutions (in particular, models of lawyers’ self-governance, organizational and legal forms of practicing law, as well as the attitude of the state and society towards lawyers’ monopoly) existing at the same time with the universality of its characteristics for all EU member states (for example, the presence in their legislation of Codes of Professional Ethics of Lawyers).

The EU countries, which have a long history of the development of the Bar, well-established professional traditions in this area, as well as a developed democratic regime (France and Germany) can be defined as a classical model of advocates’ self-governance.

The territorial model of advocates’ self-governance is characteristic for Austria, which has its own specific administrative-territorial structure, resulting in peculiarities of the activities and functioning of advocates’ bodies in this country. This model of advocates’ self-governance is similar to the Ukrainian model, which also has a specific territorial aspect, involving representatives from the advocates’ community.

The union model of lawyers' self-governance, without compulsory membership, envisaged by the Swiss legislation, which is implemented through the creation of associations of representatives of the lawyers' community.

Bodies of lawyers' self-government in the EU member states are as independent as possible from the state authorities, have sufficient freedom in the implementation of their activities, which allows to effectively implement the provision of the constitutional right to receive qualified legal assistance. For example, in Germany this mechanism is implemented through the existence of the institute of the trustee, in Italy - through the legislated right to defense and legal representation, a similar right to defense is enjoyed by citizens of Switzerland, in Spain, this mechanism is implemented through the legislated right of citizens to appeal to a lawyer in case of restriction of their freedom in any form.

The Bar in the EU member-states is a public-law institution in its legal nature, and by adopting the corresponding special legislation the countries set certain criteria for its functioning, provide conditions, which facilitate lawyers' professional activity, and provide them with legal services effectively and properly. In the first place, first of all, through a ramified, correctly structured organizational network of advocates' self-governing bodies in these countries.

The legislation of the majority of EU member-states defines the Bar as a professional association of persons carrying out a legal profession. At the same time, the notion "legal profession" has substantive content covering all persons recognized and registered as lawyers in accordance with the procedure established by the laws of this or that state, as well as the organization of lawyers, which has its own principles of activity, competence, requirements to knowledge, skills, and abilities, as well as relevant moral and ethical qualities of representatives of the legal profession.

The models of lawyers' self-governance are independent and do not coincide with the forms of lawyers' professional activities. National legislation of the EU member states is aimed at encouraging lawyers' activities in various organizational-legal forms, which at the same time provides for certain restrictions in respect of persons who are not lawyers and do not carry out this form of legal activity, in order to weaken their influence on the activities of lawyers' associations.

The main organizational and legal form of lawyers' associations in the EU member-states is a non-commercial partnership (an association established in accordance with the requirements of civil law). In addition, in France, the lawyers' associations can be established in the organizational-legal form of a holding company, in Denmark - a limited liability company or a joint-stock company of lawyers. Depending on the established legal

form of the lawyers' associations in this or that EU country, the form in which the advocates' self-governing bodies will function will also differ.

The political, economic, and social integration processes, which are taking place in the EU countries at the present stage, directly affect the creation of a specific system of legal norms, related to the implementation of lawyers' activities by their representatives in the common European space, which involves creating appropriate conditions for the functioning of the Bar in these countries, as well as lawyers' self-governing bodies.

We are talking, first of all, about ensuring conditions for free provision of legal services (freedom of provision of services provided for by the EU legislation), about providing sufficient freedom of operation of legal institutions, elimination of protectionist documents that restrict the freedom of movement of lawyers, which is especially important in the field of criminal justice with the spread in the European space of crimes of transnational nature.

The mechanism for controlling the performance by lawyers of their professional duties at the proper level is the lawyers' professional ethics, which provides for strict compliance with its provisions by those who are subject to its influence. Most of the national Codes of Professional Ethics for Lawyers adopted in the EU Member States are normative rather than legal acts, because they are adopted by lawyers' self-governance bodies, and not by the legislative or state-authorized bodies for adopting such legal documents. However, there is an exception to this general rule, since a small number of codes of professional ethics for lawyers are legal acts by their legal nature, since they are approved either by laws of these states or by decrees of their presidents, and some Codes supplement provisions of legislative acts by their prescriptions, which is expressly mentioned in them.

The fundamental basis of all the Codes of Professional Ethics adopted by the EU Member States are the principles of independence and inadmissibility of certain activities for lawyers (an incompatibility of a lawyer's professional activities with his/her status). The legislation of the EU member-states and regulatory acts of the lawyers' associations operating in their territory reflect the common business practice and different approaches to the definition of "inadmissibility" of certain activities for lawyers, which significantly differ from each other, are implemented - from a total ban on any other activities to permission to combine practicing law with certain other activities, and in most cases only if lawyers observe the principle of independence.



#### 4. Discussion

“Both law and medicine rely on self-regulation and codes of professionalism to ensure duties are performed in a competent, ethical manner” (Hamm and Esplin, 2018: n/p). As I.I. Bochulyak (2019: n/p) notes, “the extreme importance of the functional load of the Bar requires lawyers to follow high ethical standards of conduct in both professional and personal activities”. To ensure an appropriately high level of such behavior, there is an obvious need for appropriate regulations governing the advocacy. For example, in the EU Member States, deontological codes of advocates have been adopted and are in force, which in their content are a peculiar means of controlling the proper quality of performance of their professional duties.

By its legal nature, the bar self-government body is a quasi-governmental body, which is a subject of public law relations, which, on behalf of the state, performs certain functions related to the optimization of the practice of law by guaranteeing the independence of advocates, ensuring their protection from interference in the practice of law, maintaining a high professional level of advocates and creating an optimal mechanism for the implementation of these tasks (Beck, 2022). In addition, at present, the process of development of Ukraine as an independent, sovereign, democratic state governed by the rule of law continues (Pasha, 2022). Equally important is the fact that “in human rights advocacy, lawyers have the right to use various means of communication with government agencies and municipal authorities...” (Pogosian *et al.*, 2021: n/p).

In accordance with the above, at the present stage, the issue of reforming the methods of providing legal aid is relevant, theoretical legal knowledge and developed practical experience on the activities of the bar system and the professional ethics of its representatives in the EU countries are needed, which will allow borrowing positive experience in this area.

“Over the past three decades, the legal profession has experienced globalization, the rise of mega-law firms, and intensified competition” (Boni-Le Goff *et al.*, 2020: n/p). However, despite the changes taking place in the legal profession, there are a number of member states that have a classic model of bar self-government with a long history. These are, first of all, France, Germany, Italy, Spain, and Greece, in which membership in the Bar is directly related to belonging to the chamber (collegium) of advocates, and the representatives of the bar community are assigned to the Supreme Court of a certain region or oblast.

Another approach to the organization of the bar self-government exists in Austria. The legislation regulating this activity has been amended, “in Austria, the main reason to make a legal amendment was to safeguard the interests of the grantor at times, grantors of an attorney can control the

attorney, give him or her directives and revoke his or her power at any time” (Ganner, 2015: 35), that is, in this way the attorney’s monopoly in this country was limited. It should also be noted that Austria is characterized by such a model of bar self-government, which can be defined by the following characteristics: the bar chambers are distributed on a territorial basis, and they unite all those representatives of the bar community who are registered by the authorized body located in a certain administrative-territorial unit.

According to this division, the jurisdiction of each chamber of advocates will extend to a certain territory for which it was introduced, as well as to all advocates included in its register.

It should be noted that it is important not only to properly organize the system of advocacy, whose representatives carry out their professional duties effectively but also to comply with the norms of morality and ethics at all stages and in all forms of its implementation. For example, the issue of videotaped interrogations seems to be currently important in Switzerland and most of these practitioners see this practice as potentially beneficial (Courvoisier, 2017). Switzerland, as well as Sweden, provide for a model of advocates’ self-governance, created through the formation of associations and unions of representatives of the legal community, and membership in them is not mandatory.

Sufficient attention in the legislation of these countries is also paid to the issue of professional ethics of lawyers, as noted in his scientific work K. Helgesson:

The lawyers perceived their role as front-line workers to be more complex due to their professional norms and ethics on client privilege, and what they saw as the proper role of lawyers, being in conflict with the obligation to report clients and their transactions (Helgesson and Mörth, 2018: 236).

Despite the differences that exist between the main models of lawyer self-governance in Europe, it is clear that “...on the role and impact of lawyers outside the litigation context, followed by the influence of the legal system on lawyers, with a focus on lawyer distress (prevalence, causes, and consequences)” (Reed, 2020: n/p), the role and influence of lawyers in the exercise of their professional duties is limited.

However, regardless of the country in which an attorney performs his/her professional activities, he/she must possess the relevant skills and professional competencies, for example, one of the core assumptions is that more experienced attorneys have more in-depth knowledge of the intricacies of the patent system and, thus, are more likely to pursue more elaborate and successful filing strategies (Frietsch and Neuhäusler, 2019).

One of the most important tasks of the bar self-government bodies is to control the quality of legal aid services, “on the other hand, partners

are apt to claim that associates are not legal-beagle savvy enough to work without strict instructions” (Eliot, 2021: 1). Legal services provided by lawyers, control and self-control over their implementation, as well as the provision of legal education among the population, which is being actively implemented in the EU countries and can be used in Ukraine to improve the efficiency of the bar system, in particular.

## Conclusions

Based on the study, we can conclude that:

1. The manifestation of the principle of independence of the profession of advocate and ensuring the full functioning of the bar self-government bodies in the EU countries is to guarantee the freedom of their activities within the law and its implementation in practice.
2. It is possible to distinguish three main models of bar self-government in the EU countries: classical, territorial, and union, depending on the conditions in which lawyers carry out their activities.
3. The formation of a certain model of bar self-government in a particular EU country depends on a set of factors, in particular, the history of the establishment of the Bar in it, as well as the administrative and territorial structure of the country.
4. The institution of the Bar and bar self-government is sensitive to the economic, social, and political changes that take place in a particular country, so its reform should meet the realities of time and the needs of the population in need of legal aid services.
5. Reform of the Bar and bar self-government bodies in Ukraine should take into account international professional standards introduced in the EU countries.
6. The above testifies to the relevance, importance, and timeliness of the chosen research topic.

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# CUESTIONES POLÍTICAS

Vol.40 N° 75

*Esta revista fue editada en formato digital y publicada en diciembre de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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