

THE GROWTH OF SOCIAL PRESTIGE OF THE MODERN LEGAL PROFESSION: A COMPARATIVE LEGAL STUDY

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На примере США, Великобритании и ФРГ в статье исследованы содержание и структура современной юридической деятельности и юридической профессии, раскрыты исторические этапы их развития, определены понятия «юридическая профессия», «юрист», «юридификация общества», проанализированы факторы роста социального престижа юридической профессии, особенности их проявления в различных странах.

Ключевые слова: юридическая деятельность, юридическая профессия, юрист, юридификация общества.

Articolul dezvăluie conținutul și structura activității juridice moderne și a profesiei de avocat prin exemplul SUA, Marea Britanie și Germania. De asemenea, au fost dezvăluite etapele istorice ale dezvoltării, au definit conceptul de „profesie de avocat”, „avocat”, „juridizare a societății”, analizează factorii care cresc prestigiul social al profesiei de avocat, în special manifestările sale în diferite țări.

Cuvinte cheie: activitate juridică, profesie juridică, avocat, juridizare a societății.

The article discloses content and structure of the modern legal activity and the legal profession by the example of the USA, the UK and Germany. Also were disclosed the historical stages of development, defined the concept of «legal profession», «lawyer», «juridification of society», analyzes factors increase the social prestige of the legal profession, especially its manifestations in different countries.

Key words: legal activity, legal profession, lawyer, juridification of society.

Formulation of the problem. The modern world cannot be imagined without lawyers who serve as guarantors of the implementation and protection of human and civil rights, while ensuring the functioning of society and the state. The implementation of these important functions directly depends on the social prestige of the legal profession in modern society. The experience of the USA, Great Britain, Germany in this regard is indicative, deserves a deep study, generalization and dissemination.

The purpose of the article. The aim of the article is to study the content of the main trends in the development of the modern legal profession

on the example of the USA, Great Britain and Germany. As part of the implementation of this goal, the following tasks are being solved: to define the concepts of «legal profession», «lawyer», «legalization of society», to reveal the factors of growth of the social prestige of the legal profession, to analyze the features of the legal profession in various legal systems.

The state of the study. Some aspects of the problem under study were considered in the works of E. Blankenburg, V. Denisenko, E. Mishina, O. Minchenko, A. Romanov, V. Svyatotskaya, L. Freedman, U. Shemshuchenko, etc. The only Ukrainian monographic study of this problem is

the work of V. Bigun [1].

Presenting main material. The term profession was borrowed in the 19th century from French. Although the French «profession», in turn, comes from the Latin *professio*, formed from the verb «*profiteri*» - «to speak in public». Originally, the profession meant «public (official) announcement of one's specialty». In the modern sense, a profession is a type of labor activity of a person who owns a set of theoretical knowledge and practical skills acquired as a result of special training and work experience. The name of the profession is determined by the content and nature of the work or service functions, the tools or means of labor used. Many professions are divided into specialties.

The «traditional» professions include law, medicine, theology and military affairs. Ancient Greece was ruled by merchants and lawyers, republican Rome by military and lawyers. Priest, lawyer, doctor in the 15th century occupied the highest places in the hierarchy of prestige of professions of the Middle Ages. The era of great geographical discoveries led to the growing popularity of maritime professions. The development of trade and commerce moved merchants and bankers to the first places in terms of income. But in the Anglo-Saxon legal system, given the common law, the profession of a lawyer again became the most prestigious. Its popularity was also facilitated by its close ties with trade and land tenure. By the 19th century lawyers topped the ranking of the most prestigious professions in the UK. In the 19th century lawyers and journalists have become professions from which the intellectual elite is formed, which strives to improve life in society and the state.

According to the forecasts of futurologists, scientific and technological progress, social and climatic changes within the next twenty years will transform the market of professions beyond recognition. This is precisely the conclusion of the «Shape of Jobs to Come» report prepared by research firm Fast Future for the UK government. But it also gives lawyers a place in the top twenty professions.

Since 1947, the National Center for the Study of Public Opinion in the United States has regularly conducted research on the prestige of various professions. The prestige of each of the 90 profes-

sions is assessed by respondents for 5 positions: best, good, average, slightly worse than average, and worst (ranging from 1 to 100 points). Comparative data in 1949, 1960, 1972 and 1982 ranked a police officer with 48 points between an office manager and a musician, and a judge and a lawyer shared the third place in the hierarchy, receiving 76 points each and overtaking a doctor (74), a dentist (74) and banker (72).

A lawyer (Latin «*Jus*», German «*Jurist*», English «*Jurist*») is a practitioner in the field of law, a specialist in jurisprudence. Today the concept of «lawyer» unites all people engaged in diverse professional legal activities - judges, lawyers, prosecutors, investigators, notaries, legal advisers, etc. [13, p. 491].

The legal profession in Europe was founded in the 3rd century BC in the Roman Republic. It flourished during the imperial rule of Justinian I (527-565). The *Pandects* contain excerpts from the works of 39 lawyers. About 50 more names of lawyers of the imperial period are known.

The first lawyers were the Roman priests - pontiffs. Gradually, the law became a secular phenomenon, separated from religious traditions and aimed at resolving conflicts related not only to religious life.

In the Middle Ages, starting from the 12th century, law is associated with the activities of university legal scholars. European law is proclaimed by the law of universities. The first university in the history of Europe - Bologna was originally created exclusively for the training of lawyers. Each of the later founded universities - Sorbonne, Oxford, Cambridge and others - also necessarily included a faculty of law.

In terms of the popularity of the legal profession, England became the heiress of Rome. Already in the 15th century every wealthy person used the services of his own lawyer, who was paid substantial money. The fact is that the system of land tenure in England has always been very complex, so in court it was possible to challenge the ownership rights of anyone, except perhaps the king.

The modern legal profession has been able to realize two complementary principles: unity and differentiation. The development of integration processes in society determined the need for the existence of common philosophical and institu-

tional foundations of the legal profession. At the same time, each legal system under the influence of social traditions has retained its specificity in the structure and meaning of the legal profession. In this connection, the experience of the FRG is of particular interest. There, the profession of a lawyer always gave the best chances for obtaining a public office. More than 50% of German lawyers are employed in public law. It has become a tradition that a person with a legal education is appointed to the position of the head of the relevant department. According to German researchers, the reasons for such a privileged position of lawyers in the bureaucratic system should be sought in the «era of liberalism», when the state was viewed as a «producer and guardian of general legal norms», which is why officials with legal education were considered the most prepared [8, p. 104].

Judges (there are more than 21 thousand of them in Germany, including only 500 federal ones) are regarded as officials of a special kind. Their status is regulated by the law on judges, which reproduces many of the provisions of the general law on officials. But a number of provisions of this law apply not only to judges, but also to other high representatives of justice. All these persons have no right to strike. They are limited in their statements, in additional professional activities.

Lawyers are also subject to legal requirements. The main regulations governing the activities of the German Bar include: «Professional Regulations on Lawyers», «Federal Regulations on the Bar», «Regulations on Professional Advocates», «Law on Advocacy Fees», etc.

The dynamics of the number of the German legal profession is as follows. According to the data of the Society of German Lawyers, in 1961 there were 13,787 lawyers, in 1981 – 30,510, in 1999 – 76,000, in 2007 – more than 110,000 (with 80 million population). In 2015, the number of lawyers was 163,545 [11, p. 176].

The legal profession in the family of common (Anglo-American) law has significant features. They were formed in the process of long historical development under the influence of political, economic, and spiritual factors. And if the Romano-Germanic legal family was formed in a rational way, then the Anglo-American one – in a natural evolutionary way, in the course of the develop-

ment of judicial practice. The practical activity of lawyers has become the main determinant of the development of law, and practice, pragmatism have been and remain the main features of legal activity.

The prestige of British lawyers is supported primarily by the authority of the court and judges. For a long time, they supported parliament in the fight against royal absolutism. Today judges play an important role as a counterbalance to the absoluteness of parliamentary power. In addition, they ensure the effectiveness of the state system of free legal aid, legislatively enshrined in the Law on Access to Justice (1999).

There are approximately 3000 professional judges in all categories in England. Another 30,000 people are involved in the magistrate courts. These so-called justices of the peace are not professional judges and have no legal education.

The division of private lawyers into «barrister» and «solicitor» in Great Britain took place as early as 1340. The fundamental difference between their functions is that solicitors are primarily engaged in directly working with the public (contracts, wills, etc.), and the specialization of barristers are lawsuits. Only barristers can appear in the highest courts, while solicitors only prepare documents for them.

This section is unique to England and Wales. It is absent in other countries of the British Commonwealth. There are approximately 11,500 barristers in the UK (70% of them work in London) and 96,000 solicitors. This is approximately 1,718 lawyers per 10,000 population [9, p. 189]. Attempts have been made more than once to overcome the professional fragmentation of the English legal profession (as they say in the West, «Balkanization of the legal profession»), but even today there is no convergence. They continue to differ in traditions, rules of professional activity, functions, organization [10, p. 285].

The most widespread legal profession is in the United States. Not only in terms of the share in the American personnel structure, but in comparison with other countries. If we analyze the mass character of the legal profession in individual states, then in 2013 the leader was New York with a total number of lawyers of 166,317 people, then California – 163,163, Texas – 826,007, Florida –

68,464, Illinois – 62,496, Pennsylvania – 49,697, Massachusetts – 43,003, NJ – 40,993, etc.

The number of lawyers in the United States is regulated by the market mechanism. In a country where there are many law schools with different entry requirements, almost every college graduate can enter law school if they want to and have the money. Newly minted lawyers who annually receive permission to practice. Recently, the subject of discussion has been the question: are there not many lawyers in the United States? Lawrence Freedman writes about this: «The culture has grown in this country, which somehow depends on the crowd of lawyers. Our business system cannot exist without lawyers, our social system also depends in a strange way on the legal profession. We would be better if did we have fewer lawyers? That's not a question. Without lawyers, this is a completely different society in a completely different world» [12, p. 205].

A 1998 Presidential Competition Council report noted that, according to statistics, there are significantly more lawyers in the United States as a percentage of the population than in other countries (despite the fact that from 1998 to 2013, the number of lawyers in the United States increased by 282,000). For example, in the United States there are 28 lawyers for every 10 thousand inhabitants, in Germany - 11, in England - 8, and in Japan - only 1 lawyer.

The legal services market is a source of substantial income. The added value of the legal services sector in the structure of national income in 1986 amounted to almost 54 billion dollars and is growing every year. This is more than the steel industry (\$ 30 billion), the textile industry (\$ 38 billion) and even the automotive industry (\$ 50 billion). At the same time, the amount of annual expenses for legal services in the country at the turn of the 20th-21st centuries. was about 120 billion dollars.

The overwhelming majority of lawyers in the United States are private lawyers who are part of law firms of various sizes. A significantly smaller proportion of those lawyers who perform the functions of full-time legal advisers in various enterprises, as well as serving government agencies.

The profession of a judge is an extremely prestigious and at the same time responsible legal pro-

fession. This is due to a number of factors. As polls of American judges show, the strength of the US judicial system arises from its historical roots in the common law of England, by virtue of which the judicial office in the American colonies was initially respected. Secondly, in the United States, «judges make law». Third, the US Constitution guarantees high judicial prestige. Judges at all levels maintain their positions in accordance with the principle: «while behaving impeccably». American judges have no specialization. Each of them considers both civil and criminal cases.

Individuals in private practice are the largest category of lawyers. This includes approximately 72% of all lawyers in the country. It is difficult to talk about private practice as something unified due to the variety of working conditions and organizational structures that are included in the general concept of private legal practice.

A large group is formed by lawyers from government agencies. These are staff members of the legal services of legislatures, executive agencies, local agencies, officers and heads of public prosecution bodies. The largest state «law firm» is the Department of Justice, which is run by the government's «chief lawyer», the US attorney general.

An important factor in the growth of the social prestige of the legal profession and legal education is the «juridification» of modern society. It reflects the tendency, common for developed countries, to expand the subject of legal regulation, to increase the number and specialization of laws and other sources of positive law. This process has both positive and negative consequences. Positive ones are associated with the fulfillment of the social function by the state, greater provision of guarantees for human rights, and an increase in personal freedom. The negative consequences are a decrease in the effectiveness of law, an excessive complication of legal regulation. As the English researcher R. Susskind writes, «... Too many laws have been created to manage, our current methods of managing legal assets are based on paper and print technologies, and are unable to solve problems with the volume and complexity of the law that governs us». [5, p. 133-135].

Conclusions. Summing up the research results, the following generalizations can be formulated.

1. The legal profession is one of the most demanded, popular, highly paid professions of our time.

2. There is a steady upward trend in the social prestige of the legal profession and its role in all spheres of public life.

3. This trend is due to objective factors in the development of modern society.

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