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Voloshyna Ya. – Postgraduate Student of the Department of Theory of State and Law of the National Academy of Internal Affairs, Kyiv, Ukraine

THE NOTION OF LEGAL ADVISORY ACTIVITY AS A FORM OF LEGAL ONE

The article investigates the concept of legal advisory activity as a form of legal one. With the rapid development of social relations and globalization processes taking place in all spheres of life, legal advisory activity has become of particular vitality. But to date, the issue of the legal advisory activity research is paid insufficient attention.

Keywords: legal activity, legal consultative activity, features of legal consultative activity, legal adviser, enterprise, establishment, organization.

Under the modern conditions of rapid and progressive development of society and social relations there appear many types of human activity. Any activity that is related to individual's activity – a member of society, is a social one. Particular attention is attracted by legal activity, as a form of social activity, due to the existence of law and it is linked to the necessity to separate the legal profession. However, the diversity of social needs and interests determines the corresponding diversity of legal specializations within the profession as certain types of legal work.

Lately, with the expansion of business, the need for the enhancing of efficiency of legal support of enterprises, institutions and organizations has become vital, which to some extent determines the relevance of the legal profession, and therefore of legal advisory activity as well. At the same time, in the domestic jurisprudence the issues concerning legal advisory activity are paid insufficient attention, including questions of its scientific and theoretical understanding, which indicates the need for planned and systematic explorations in this direction.

The issues of legal activity and its varieties were paid significant attention by domestic and foreign scientists, such as: S. S. Alekseev, Y. M. Arystakov, I. V. Bryzgalov, I. V. Golovan, V. M. Kartashov,

B. I. Puginsky and others, who in their works explored the concepts, general features, functions and types of legal activity. Their scientific achievements can be considered to be the theoretical basis for the continuation of similar researches, carrying out the systematization of scientific material to address other cognitive tasks. However, in the current situation of social development, the formation of new principles and conditions of production there appear the need for deep study of legal advisory activity, its general and specific features, characteristic only for it properties.

The goal of this article is to present the characteristic of the general and specific features of the legal advisory activity, formation of the corresponding author's definition.

Achieving of this goal necessitated the fulfilling of the following tasks: comprehension of the characteristic features of legal activity; disclosure of the content of certain features of legal activity and their application in the sphere of legal advisory activity; separating the specific features of the legal advisory activity; forming author's own definition of «legal advisory activity».

The methodological framework of research comprises a number of methods such as: comparative analysis, formal-dogmatic, hermeneutic the application of which allowed preparing reasonable conclusions.

Currently a large variety of human activities is carried out, due to the rapid development of social processes and relationships.

Thus, due to the transformation of spheres of economy and businesses that need skilled legal support, such type of legal activity as legal consultation acquires special relevance. According to these trends there is a need for the differentiation of activity of businesses legal services that accompany production processes; theorizing the reasons for separation of types of professional activities of lawyers at enterprises, institutions and organizations; identification of prospects and objective factors of further specialization of legal activity in the economic field.

Modern scientific literature contains two approaches to understanding of the legal activity. Some scientists consider legal activity as a form of juridical activity performed by lawyers to meet the legal rights and needs of social subjects [4, p. 85]. At the same time, other scientists understand the legal activity as the kind of social activity carried out by lawyers with the aim to obtain the necessary and planned legal result [8, p. 30].

Of course, the views of theorists differ from each other very slightly, but all agree that such activity is of legal nature and is exercised exclusively by experts in the field of jurisprudence, whose efforts are aimed at the achievement of the set legal goal or achievement of legal result [3, p. 18].

Taking into account that the legal advisory activity is a type of legal activity, in order to conduct a full and thorough investigation, the traits of legal activity should be considered in the light of professional activity of legal advisor.

Representatives of theoretical law distinguish such traits of legal activity as legitimacy, normativity, formality, professionalism, collectivity, obligatoriness, independence, procedural character.

The most important feature of the abovementioned ones is the legitimacy that is inherent in all kinds of legal activities, including advisory one. Legitimacy means compliance with the law and performance in accordance with the law [4, p. 164]. Legitimacy is defined as a category which characterizes the level of legal life of the country and its population [5].

According to the Basic Law of the State (Article 19), all bodies of power, officials of any organizations (companies, institutions) should act exclusively on the basis, with in the powers and in the manner envisaged by the Constitution and laws of Ukraine [6]. A legal advisor is no exception, in the course of implementation of responsibilities and professional duties he must act only within the legal framework, be guided only by the principle of legitimacy, which is one of the fundamental principles of the modern concept of legal state.

Considering the characteristics of normativity in the context of the legal advisory activity it is appropriate to talk about legal display or consolidation in the normative-legal act of the purpose, the basic principles of the legal advisory activity, rights and duties of a legal advisor, his liability that together form the idea of his legal status. Unfortunately, many issues of legal advisory activity remain still unresolved at the legislative level, because in Ukraine there is no special act of legislature that would clearly define the main aspects of a legal advisor's professional activity. Today the activity of a legal advisor and legal department as a whole is regulated by General Regulations on the legal service of the Ministry, other body of executive power, state enterprise, institution and organization, approved by the Cabinet of Ministers of Ukraine of November 26, 2008 № 1040. These Regulations govern the activity of legal

departments in the bodies of executive power, as well as enterprises (institutions and organizations) [7]. However, this act does not cover all components of legal advisor's status, does not define the types of legal officer's liability for improper fulfillment of his duties or committing of disciplinary offense, does not prescribe the procedure for holding to such liability of a legal advisor, does not specify qualifications for his position. Besides in Ukraine, as in a democratic state, it would be appropriate that the legal advisory activity were regulated at the legislative level. This will provide increased control over this type of professional activity of lawyers; enhance of the legal services' credibility and eventually legal principles' authority in the organization of production processes.

Concerning formality it should be noted that this trait is in formal and documentary consolidation of any legal information about novelties in legislation, circumstances of the case, made decisions and so on. Any result of a legal advisor's professional activity (solution, proposals, advice, draft documents, analytical information, legal opinions made in writing) or the result of a certain stage of his work is formalized in certain documents, acquires documentary (legal) nature according to the prescribed by law form and content.

For example, Article 119 of the Civil Procedure Code of Ukraine sets the requirements for registration of the claim that is the responsibility of a legal advisor, which indicates that it is binding to specify the number of details: the name of the court and the names of the parties, the content of the claim and price of action, the actual circumstances of the case with indicating evidence. These formal requirements must be met in full by the legal advisor for exercising the right to judicial protection on behalf of the organizational structure.

Another characteristic trait of the legal advisory activity is professionalism. This trait describes the high level of professional training that includes: firstly – mastery of the legal framework, which governs one or the other sector of economic activity; availability of general and professional (legal) knowledge at different levels; possession of skills of thinking and working on documents; the availability of work experience in a professional direction and a high level of legal consciousness. Professionalism of work involves the impossibility of proper legal support of the company activity by the person incompetent in this area. General Regulations on the legal service of the Ministry, other body of executive power, state enterprise, institution and organization, provide for general

educational qualification requirements (availability of citizenship of Ukraine and of higher legal education, fluency in the national language), which apply to all lawyers, including legal advisors [7]. Taking into account the trend of intensification of production, within individual enterprises (institutions and organizations) requirements for candidates for the positions of legal advisors are gradually increasing, which is caused by the peculiarities of modern personnel, anti-corruption and economic policy of the state and needs for prudent management and sometimes multi-vector production activity of the company as well.

Legal advisory activity possesses such typical trait as collectivity. In this case, the matter refers to the legal department of the organizational structure as a whole, whose collective work is aimed at performing of common task or achieving a legal goal. Collectivity of work occurs when the expertise and efforts of each legal officer (management, department, division) are combined to enhance the professional capacity of legal advisors staff.

Collectivity of work of legal advisory activity also lies in the fact that the person who holds the position of legal advisor at the enterprise (institution or organization) is in a functional relationship (interaction) with other subjects of the production process. This refers to the purposeful interaction of multiple services (units) of the organizational structure in solving of general organizational or general management issues. In the course of performing of their professional activity a legal advisor (legal department) has to interact successfully with financiers, economists, engineers, HRs, etc., as the success of the whole company depends on their coordinated teamwork.

Obligatoriness of decisions is the characteristic trait for legal advisory activity.

Modern scientific literature contains a widespread opinion according to which professional activity of a legal advisor is largely of optional character as legal advice – is advice by a specialist of advisory type [1].

The basic idea incorporated into this description, is that the legal advisor does not have administrative and management functions, and therefore there is no authority to issue orders and instructions which are to be unquestionably performed. However, in this case, the interpretation of trait of obligatoriness obtains a little bit different meaning. It should be noted that professional opinions and advice by legal advisor are mandatory for anyone who prepares and issues the

above mentioned organizational and administrative documents. Conclusions by a legal advisor in their importance are indisputable for fulfillment by subjects of management, as the conclusion contains not just the opinion of an expert, but the demand of legislators on standards, terms, procedures and forms prescribed by normative-legal acts. For example, the law established order of mandatory approval by legal advisor of important and risky for the company (institution or organization) documentation. Having visas by legal officer on such a legal act confirms its validity, and hence the legitimacy of the made by the head decision. At the same time to perform management according to the law, in the manner prescribed by law – is the duty of the heads of various levels. The said obligatoriness is achieved including through mandatory compliance with procedures of legal expertise decisions and mandatory taking into account of the reservations and recommendations made by the legal service of the enterprise (institution, organization).

Among other traits, the legal advisory activity, as subtype of legal one in general, the trait of independence is inherent. It should be noted that the professional activity of legal advisor must be free from influence of any kind and origin (political, economic, or interpersonal), and his decisions must be adopted fairly, objectively, balanced and impartially. Although theoretically the potential risk of impact on opinion or activity of a legal advisor by management is always present, keeping in mind that every manager is interested in achieving the legality of decisions as well as ensuring the profitability while realization of production tasks in the subordinate organizational structure.

Unfortunately, there are cases where legal advisors depend on the administration of the company (institution or organization), because exactly according to the will of the authorities bonuses, allowances and additional remuneration for the performed work are being calculated. But in this case, the legitimacy of management of the organizational structure is questioned and the likelihood of adverse legal consequences increases.

Legal advisor should be apolitical, rely on the letter of the law and the principle of rule of law. His independence that is one of the fundamental characteristics of any professional work in the field of law lies exactly in this.

For legal advisory activity processuality (procedural nature), which is demonstrated in a mandatory keeping legal requirements regarding the carrying of this or that professional act, is also a

characteristic one. In this case processuality is in the presence of a certain sequence of professional activities sometimes with a clearly defined terms of execution. In other words, every legal action is carried out by a legal advisor under a particular algorithm, which refers to a set of actions with the defined sequence, that are united by a common purpose or desire to obtain a certain result [2].

Substantive law is implemented through a series of procedural law norms. For example, every entity (natural or legal) has the right to appeal to court, but legal advisor has special knowledge of the order (procedure) to realize this right, that is provided for by the norms of specific act (Commercial Procedural Code of Ukraine, Civil Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine etc). Legal advisor monitors the legality of implementation of the procedure which is a guarantee for making fair adjudication in future.

Having carried out an analysis of the legal advisory activity in the light of the basic features of legal activity as a phenomenon bigger in terms of volume, it is possible to state that each trait of legal activity finds its expression in the use of legal advisors who work as the part of labor forces of enterprises, institutions and organizations. However, each of the mentioned above traits is demonstrated in its own way, finding its own specifics of external manifestations, as well as this happens in the field of judicial, advocative or prosecutorial activity.

At the same time, along with the general characteristics, legal advisory activity has specific traits, whose presence allows to separate it from other types of legal activity. These specific traits of the legal advisory activity include: 1) qualification requirements that are put to the candidate for the position of a corporate lawyer as well as professional duties of a legal advisor are closely connected with the sphere of production of the enterprise (organization, institution), its main production tasks and functions in a particular area of the economy; 2) the overall goal of legal advisor activity is legal support of the production process at the plant, and representation and defense of its interests (interests and rights of the working staff) in collaboration with authorities and other subjects of economic activity.

Taking into account results of the analysis of separate features of legal activity in the context of professional activity of a legal advisor and considering the defined specific features of the legal advisory activity, it becomes possible to offer author's definition of the concept of «legal advisory activity». Thus, legal advisory activity – is a kind of legal activity performed on a professional basis, closely

connected with the sphere of functioning, the main directions and tasks of the enterprise (institution, organization), which aims to provide legal support to the production process, representation and protection of interests of the organizational structure, legal service to which is provided by the legal advisor.

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Проаналізовано загальні ознаки юридичної консультативної діяльності, на підставі чого сформульовано авторське визначення поняття «юридична консультативна діяльність».

Ключові слова: юридична діяльність, юридична консультативна діяльність, ознаки юридичної консультативної діяльності, юрисконсульт, підприємство, установа, організація.