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## **Legal system of Autonomous Advocacy as example of the self-legislation in voluntary association**

*In the article proposed empirically verified theory of three stages in evolution of legal personality's autonomy: freedom, tradition and law. As a model described private legal system of NGO "Autonomous Advocacy", reinstatement of the Provocatio ad populum (appeal to the people) ancient Roman right, which in modern times means freedom of speech to call for justice and freedom of association to enforce fair laws and legal relations.*

**Keywords:** *personal autonomy, private legal system, evolution of law, freedom of association, advocacy, provocatio ad populum.*

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## **Правова система Автономної Адвокатури як приклад самоуправління у добровільному суспільному об'єднанні**

*У статті запропоновано емпірично перевірену теорію про три етапи еволюції автономії суб'єкта права: свобода, традиція і закон. Як модель, описано приватну правову систему Громадської організації «Автономна Адвокатура», яка відроджує давньоримське право Provocatio ad populum (звернення до народу), що в сучасних умовах означає свободу слова для заклику до справедливості та свободу об'єднань для утвердження чесних законів та правових відносин.*

**Ключові слова:** *особиста автономія, приватна правова система, еволюція права, свобода асоціацій, адвокація, provocatio ad populum.*

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## **Правовая система Автономной Адвокатуры как пример самоуправления в добровольном общественном объединении**

*В статье предложена эмпирически проверенная теория о трех этапах эволюции автономии субъекта права: свобода, традиция и закон. Как модель, описана частная правовая система Общественной организации «Автономная Адвокатура», возрождающая древнеримское право Provocatio ad populum (обращение к народу), что в современных условиях означает свободу слова для призыва к справедливости и свободу ассоциаций для утверждения честных законов и правовых отношений.*

**Ключевые слова:** *личная автономия, частная правовая система, эволюция права, свобода ассоциаций, адвокация, provocatio ad populum.*

### **Challenge problem**

Essential problem for modernization and development of legal science in today's global world of human-centered values and individual sovereignty is to determine in empirical research and modeling the nature of personal autonomy, its origin and evolution with legal personality.

### **A review of recent studies and papers**

Recent research and publications on this problem, firstly, include Kai Möller's monograph "The Global Model of Constitutional Rights" (2015) with study of a general right to personal autonomy in contemporary model of constitutional law as right to everything which, according to the agent's self-conception, is in his or her interest, as well as many other studies of personal autonomy: in practice of European Court of Human Rights, by Jill Marshall and Nelleke Koffeman; in practice of Supreme Court of the United States, by Robert A. Sedlern and Thomas Kleven; in criminal law, by Peter Alldridge and Chrisje H. Brants; in civil law, by Aurelia Colombi Ciacchi and Margaret Isabel Hall; in philosophy of law, by Jan-R Sieckmann and Sergey Arkhipov; etc.

### **Remaining challenges**

Despite personal autonomy is well studied in connection with human rights and corporate law, personal autonomy genesis still left without complex practical research in law science.

### **Draw the objectives of research**

Aim of the research is to explore the process of evolution of entity's personal autonomy and to allocate its main stages. For that purpose materials of the NGO "Autonomous Advocacy" were analyzed using scientific methods of systems thinking and dialectics.

### **Discussion**

In the author's study of legal basis of personal autonomy of private persons and organizations problem was revealed with absence of scientific researches and system vision of evolution of individual freedom. Almost all historical and cultural studies of law are dedicated to constructing artificial models of com-

plex conditioned processes with wide spread in society, time and space. Even psychological approaches to study evolution of legal consciousness, or legal awareness based on idea of "legal emotions" (honestly, it means the fear) and "legal literacy" imposed by authorities in system of law enforcement, propaganda and education. In better case, such studies just recognize natural way of forming of legal beliefs in legal relations.

Of course, good expression of the idea of personal autonomy given in Universal Declaration of Human Rights that proclaim as common and consensual standard of humanity freedom of opinion and expression, freedom of thought, conscience and religion, as well as freedom of peaceful assembly and association to form communities for free and full development of personalities (Articles 18-20, 29). Proclaimed even, that all human beings are born free and equal in dignity and rights, and they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (Article 1); in the Preamble expressed aspiration for a world in which human beings shall enjoy freedom from fear, mentioned that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law [1].

Autonomy, in words of Sieckmann, is the central idea of modern practical philosophy and, taken literally, it means self-legislation [2]. According to Jeff King, it includes vision that fashioning life through successful decisions, freedom of choice and control over own destiny is core human interest [3]. European Court of Human Rights (ECHR) many times reaffirmed recognition of personal autonomy as important principle of international human rights law, especially in cases concerning right to respect for private life and freedoms of associations, speech and thought [4][5].

Taking the increasing human freedom as primary aim of law studies is common trend

in the modern world that touched also Ukrainian law science. Volodymyr Kopieichykov, one of the founders and leaders of Ukrainian school of constitutional law, human rights and freedoms, proved the significance of the study of personal autonomy and acknowledged that ignoring of personal autonomy leads to substantive distortion of democracy [6]. Russian jurist Arkhipov proposed theory of three stages of historical development of law: customary law, that attaching infantile human to tribe, clan or family; political law that free human from dictate of affections but still wild human forced to obey some instructions of reasonable behavior by the power of state; and law of individual sovereignty based not on the power but on the wisdom, on the reasonable design of society for harmony and equality between community and personal-ity. Also Arkhipov mentioned as levels of personal development capacity, competence and personal autonomy [7]. That vision of entity's growth in legal status as well as Auguste Comte's Law of Three Stages, despite of my critical view on positivism, leads me to idea that legal knowledge about freedoms and responsibilities is always collected by human in the "theology" of trying, "metaphysics" of ruling and "positivism" of creating.

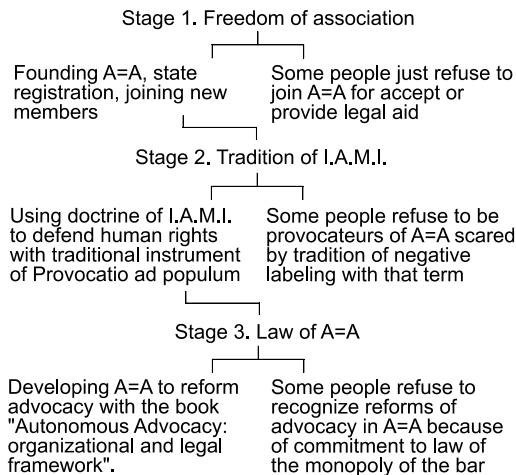
So, according to ideas of classical and contemporary law science and with my own experience I can propose the next theory of

personal autonomy evolution. Personal autonomy as the ability of an entity to live by own laws in its evolution passes through three stages: exercise of freedom and acceptance of responsibility to make tradition; exercise of tradition and acceptance of alternatives to make law; exercise of law and acceptance of reforms to increase freedom with new legal technologies. But oppression of freedom by avoidance of responsibility, alternatives or reforms causes rebellion and interrupts evolution.

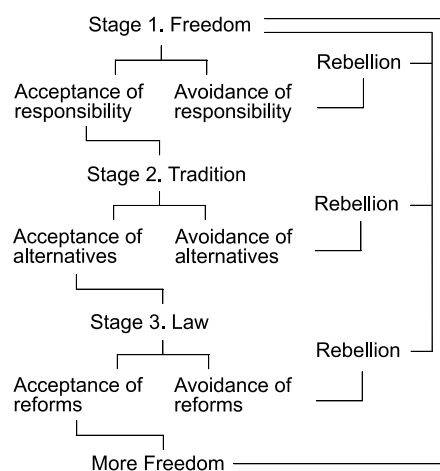
Law is vision and knowledge of forms and freedoms of being, based on practical experience of causality and enforced by natural and social technologies. Such definition of law covers social and scientific norms and leads to idea of autonomy of science, including law science. Laws of nature, empirically described and applied by experts, in particular lawyers, are imaginable as unwritten Constitution of Universethat involve, as a part of human nature, capacity to fight for freedom. That's why ignoring practice of freedom weaken the self-legislation legal doctrine, as well as legal institutions of self-enforcement are weak without respect to related freedoms. Rebellion means error of legal system caused by lack of doctrinal or institutional autonomy.

Going to practice, legal system evolution in Autonomous Advocacy passed through three stages, specified above.

**Practical model of development of Autonomous Advocacy (A=A)**



**Theoretical model of personal autonomy evolution**



At the first stage of freedom of association acceptance of responsibility means founding Autonomous Advocacy, getting the state registration, joining new members that needed or can provide legal aid. On that stage for self-legislation the mission of organization was defined and for self-enforcement registers of members was created. As for rebellion, some people just refuse to join Autonomous Advocacy to avoid responsibility.

Let's take a closer look into the mission of Autonomous Advocacy. It is practicing universal methods of legal aid in every legal system. Nature of legal aid is autonomous relations between those who call for help (provocateurs, from the Latin "pro voco" – before call) and those who come to help for call (advocates, from the Latin "ad voco" – toward call). Intention to come for help into every legal system reflected in avoiding statutory regulations for best protection of autonomous relations between advocates and provocateurs. Furthermore, avoiding statutory regulations become a part of legal doctrine of Autonomous Advocacy, justified in the next statement: reasonable mind needs no strict borders and the best written Constitution is empty sheet of paper, because real Constitution of Universe are unity of unwritten laws of nature shown in causative relationship of freedom and responsibility, in conscience of experienced interactions and agreements. Also, Autonomous Advocacy chooses to practice Golden Rule of Morality (treating others as one would wish to be treated oneself) instead of complicated ethical codes and disciplinary regulations, which often tie the hands of human rights defenders within particular legal systems.

Last years a significant increase in rates of court fee and proclaiming monopoly of the bar in the Constitution of Ukraine deprived people of access to justice. Faced tendency of monopolizing law profession and law itself by elites, Autonomous Advocacy was run Demonomolization of the Bar Project based on right of persons to choose their defenders and representatives independently, without intrusion of authorities that must respect choice of people due to natural freedom of association. If authorities imposing to people defenders

and representatives from the members of elite whoneglect interests of the people, such elitism clearly undermining social consensus which is source of law and all sorts of authority. When authorities don't allow people to question its decisions of oppressing human rights for increase privileges of elites, the only way to defend human rights is to question legitimacy of such authorities before the people who let them rule, like in ancient Roman Republic was tradition of Provocatio ad populum, appeal directly to the people who can overrule decision of ruler, for example, revoke condemnation [8]. That's why Autonomous Advocacy aimed for implementation and protection of natural human rights and freedoms in association of called for help independent experienced autonomous advocates and provocateurs who call for help, protection, representation, information, and to realize in modern times ancient law of Provocatio ad populum (appeal to the people), which means freedom of speech to demand justice and freedom of association to create fair laws and legal relations. With that aim NGO "Autonomous Advocacy" registered under No 1462771 in Ukrainian Register of civic associations; short name of NGO is A=A, the law of identity, and motto of A=A is "Ad voco pro sui iuris", which in Latin means "to call for own right".

At the second stage of legal system evolution in Autonomous Advocacy was established tradition of I.A.M.I. as legal doctrine of four forms of defending human rights by autonomous advocates: Independence, Advocacy, Mediation, and Information. Independence means self-organization and defending liberty; Advocacy means legal aid and defending human rights in concrete cases; Mediation means helping people to reach agreements and avoid conflicts; and Information means collection and distribution of legal information, as well as public relations. On that stage for self-legislation a set of procedures was designed such as public criticizing authoritarian policies, formal contracts between autonomous advocates and their provocateurs, interviews for candidates to autonomous advocates, and that procedures led to self-enforcement in private and pub-

lic confidence relations such as popularity of open letters, presence in social networks, and trust between members of organization. For example, founders of A=A became members with status of autonomous advocates using the freedom of association, but joining of new members with such status led to establishing tradition of interview due to high responsibility and qualification requirements for candidates. As for rebellion, on this stage some people refuse to be provocateurs of A=A scared by the elitist tradition of negative labeling with term “provocateur” and avoiding ancient egalitarian alternative.

At the third stage of legal system evolution in Autonomous Advocacy laws of the organization were formulated in the self-legislation book “Autonomous Advocacy: organizational and legal framework” that define general principles, essential norms and rules, such as structure and methods of Autonomous Advocacy, legal statuses of provocateur and autonomous advocate, in particular, regulations of the interview with candidates to advocate; also in the book legal technologies of self-enforcement was described, such as projects, template documentation etc. As for rebellion, some people refuse to accept reforms of advocacy proposed in the book because of commitment to law of the monopoly of the bar. So, ambitions of Autonomous Advocacy to attract more people was bounded by rebellion of non-joining of some conservative people. However, Autonomous Advocacy independently of them can take some advantages of evolution of personal autonomy and stay hope that some day they will see successful evolution and may join Autonomous Advocacy [9]. In any case, projects of Autonomous Advocacy now involved a many participants.

For example, Freedom of Belief Project in cooperation with Ukrainian Council of Free-thinkers and Believers and Institute of Open Religion aimed to help people to live according to their beliefs without breaking the law, even if those beliefs seem wrong to someone, to protect freedom of thought, conscience and religion, principles of personal autonomy and non-discrimination by the deregulation of spiritual life in Ukraine, to remove unjust limitations of the forms in which a religious

organizations can be created, binding to the short list of recognized confessions, to the territory and to the minimum number of 10 founders (whereas the same requirement for other civic associations is 2 persons), to demand state registration of religious organizations in short terms without mandatory investigations of their beliefs by experts and officials that can delay state registration to half-year and more time, in best case, or lead to refusal – in worst case.

Inexpensive Justice Project dedicated to recalculate or avoid unjust court fees overpriced by The State Judicial Administration of Ukraine and fixed in obligations before International Monetary Fund.

Another project, Overcoming Unreasonable Rejection, aimed to public challenge unexplained inadmissibility decisions and unreasonable rejection of so-called “clearly inadmissible” applications in European Court of Human Rights (ECHR). In opinion of Autonomous Advocacy, ECHR violates Article 10 of Universal Declaration of Human Rights (right to a fair trial), because, according to the ECHR website, 85% of applications declared “clearly inadmissible” by a single judge without explaining of reasons. Letters of informing about inadmissibility decision, sent to applicants under Rule of Court 52A, contain no reasons or explanations on rejection without further examination. Applicants can’t understand opinion of single judge, with what exactly admissibility criteria doesn’t meet their applications. Also, ECHR don’t allow applicants to receive a copy of the inadmissibility decision, to challenge that decision or request any further information about it. The only given explanation of that fact is follows: many people write to Strasbourg without any legal advice or assistance. Autonomous Advocacy criticize that explanation as discrimination of applicants by social status, forcing them to reach support of legal community that may not accept applicant’s vision of law or, in countries with catastrophic social inequality (such as Ukraine), many people just can’t receive proper legal advice or assistance. Procedure of Overcoming Unreasonable Rejection Project is follows. Participants give to autonomous advocate their applications to

ECHR and letters of unreasonable rejection, also they authorize Autonomous Advocacy to request and to demand answer from ECHR about reasons, why declared clearly inadmissible their application lodged under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and they give permission to publish application and letter of informing about inadmissibility decision. Copies of documents Autonomous Advocacy communicate to ECHR with requests for explanations of reasons of inadmissibility decisions and with warnings about intention to publish documents with critical remarks and also inform international institutions and public opinion in case if request will remained without appropriate answer after next 3 months. Started at summer 2016, Overcoming Unreasonable Rejection Project will run until ECHR set rule to completely inform every applicant about reasons of inadmissibility decisions and provide procedure of reconsidering such decisions taken by mistake. As a first result, Autonomous Advocacy received letter by Bjorn Berge, director of the private office of the Secretary General and the Deputy Secretary General of Council of

Europe, justifies unreasonable rejection “by the pressing need to concentrate the Court’s limited resources on the admissible cases that raise the most relevant legal issues” and promises changes by the end of 2016 so that the applicants receive a formal judicial decision on their case stating the reason for the decision of the single judge instead of a simple letter from the Registry being currently sent in such cases [10].

Projects of Autonomous Advocacy, such as Demonopolization of the Bar, Inexpensive Justice, Freedom of Belief and Overcoming Unreasonable Rejection show, why people need that private legal system of reinstated in modern times ancient law of *Provocatio ad populum*.

### Conclusions

In summary, it was verified on model of Autonomous Advocacy that voluntary association can create own legal system and pass through all stages of personal autonomy evolution which is Freedom, Tradition and Law. The next practical research of personal autonomy genesis may include detection of specified stages on other models and improving the methods of private legal systems design.

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