



## “Bar Associations for Independent, Qualified and Ethical Exercise of the Profession of Lawyer” International Conference Report

20-21 June 2016

**Tbilisi State University, Iliia Chavchavadze avenue #1  
Javakhishvili auditorium**

An international Conference on the role of “Bar Associations for Independent, Qualified and Ethical Exercise of the Profession of Lawyer“ took place on 20-21 June in Tbilisi, Georgia. Over sixty representatives of the Georgian and Bar Associations from 13 countries brought their best practices on lawyers training, lawyers deontology and lawyers rights to an International Conference.

### **SESSION 1. BAR ASSOCIATIONS’ PRACTICES ON LAWYERS TRAINING**

Irakli Kandashvili, Georgian Bar Association Board Member, presented Georgian model of continuing legal education and courses for entering into the legal profession. In his presentation Mr. Kandashvili stressed the role of advocates in promoting high quality justice, which is directly related to the education of lawyers, and overviewed practical implementation of continuing legal education.

After presenting the Georgian model Irakli Kandashvili called upon the representatives of the international delegations to share experience with regard to the cost of basic training and the forms of completion of such trainings, i.e. passing the exams, or alternatives to exams.

**CCBE Vice President, Ruthven Gemmell WS:**

In EU countries such trainings are free of charge, while in England and Scotland the cost of training is around 9000 Pound per year. Student loans are available, which can be repaid during following 20 years, after the lawyers have their own income. If a person does not have sufficient means for basic needs (housing, board), special grants are provided for him. Also, training contracts are concluded, and in such cases the fee is minimal, as part of fee is co-funded by the Scotland Bar Association. In the event of training contract a candidate passes a bar exam, while if he is already employed, a company employing him shall cover the related costs.

Mandatory professional education for qualified lawyers - in some cases such specialised course is quite expensive, but different bar associations themselves conduct such courses, where the fee is minimal.

The most widespread form of completion of basic training is an exam.

**Gilles Paruelle, France, representative of Versailles bar school:**

In France there are several categories of lawyers: those, who have newly entered into the profession, and experienced lawyers.

For lawyers, who have newly entered into the profession, continuing legal education is free of charge for two years, while others have to pay certain fee. This implies adapted education: CLE for the beginners, experienced lawyers and specialised lawyers.

The Bar Association accredits 11 schools and private institutions, which are authorised to function on the educational market. The cost of one day training is around 500-1500 EURO. As has been stated above, law school for 2 years is free of charge, while the cost of one day training is around 120 EURO.

Entering into legal profession happens through an exam, organized by the law departments of French Universities. Bachelor's degree is accepted, but as a rule in the exams take part holders of Master's degree. The enrollment rate is around 30%.

Duration of training is 18 months. The cost of the training is 1600 EURO. Upon completion of the course is conducted a specialised exam, on the basis of which a lawyer's certificate is granted. The 18 month training is exclusively oriented towards legal practice. It includes

such subjects, as the lawyers' ethics, management of a legal bureau, practical work and writing skills.

**Simon Babayan, Armenia:**

In Armenia the law school was formed with the support of the Council of Europe. A person, willing to enroll in the school should have higher education in the sphere of law, should pass special electronic exam, consisting of 150 questions, selected by a special exam software out of 2400 test questions.

Candidates can enroll in the law school twice a year. Out of 220-250 participants around 140 pass the exam. After completion of the courses a lawyer can work in criminal, as well as civil law sphere, but he is authorised to choose the form of education himself.

According to statistics, 54% of the students choose civil law, while the rest choose the criminal law. The educational process is composed of two parts: theoretical and practical. The minimal duration of education in school is one year, out of which first 6 months are theoretical courses, while remaining 6 months are dedicated to practice course.

Practice course is conducted in law firms and legal clinics. The school has its legal clinic, which jointly with the Public Defender's Office offers free legal aid to all those, who need such aid. As has been stated above, the training course lasts for one year. This is a full-time educational course. There is also an abridged full-time educational course, which lasts for 6 months. There is also a distance learning course. Special portal has been developed, through which the trainees can get education without attending the course.

Full time education course is quite intensive. The lectures are conducted every day, from 18:00 to 21:00. Once in every three weeks is conducted interim written test. Students, who have experience of work as specialists, i.e. prosecutors, lawyers, scientists, who have a scientific degree and etc. have the right to be enrolled in the school without passing the entry exam.

Distance learning course can take those persons, who reside 80 km. away from the capital. The portal allows for learning of the full course, while the exam is passed locally in the written form.

There is a legal clinic in the school, where law practice can be taken and the legal clinic and Public Defender's Office offer free legal aid to vulnerable population. Such practice is counted in the course of accreditation.

The school has career center. Law firms, which are interested in hiring new staff, often apply to the career center and select employees out of the graduates of the law school.

**Discussion:****Tsikarishvili Kakha (UNDP):**

1. Is Law School in Armenia self-funded, or the Bar Association is covering some expenses, or the state is participating in some form in funding the school?
2. Internship can be undergone only in the legal clinic?

**Simon Babayan, representative of Armenia:**

1. The school is fully self-funded, we do not have financial support from the government or any other organization. The advocate qualification course costs around 1000 EURO per year. The budget of the School comprises of the costs paid by the attendees for advocate qualification courses.
2. Internship can be undergone in specialised law firms, but there are mandatory hours, that a trainee has to work in the legal clinic.

**Pier Jiovanni Traversa, representative of Italy:**

How many credit points does a lawyer have to accumulate during one year throughout the continuing legal education course?

**Simon Babayan, representative of Armenia:**

In the event of professional development we do not have a system of credits and a candidate has to undergo mandatory professional development training, altogether 24 hours.

**Oksana Kadenko, representative of Ukraine:**

If a lawyer does not accumulate 24 mandatory hours per year, are there any disciplinary sanctions envisaged?

**Simon Babayan, representative of Armenia:**

We use disciplinary sanction – warning notice.

**Oksana Kadenko, representative of Ukraine:**

In Ukraine if a person has higher education in the area of law, and has a 2 year experience of work, he can pass a qualification exam, which consists of two parts: written and oral exam. In the event, if a person successfully passes the exam, he shall get a certificate, but it does not grant him the right to be a practising lawyer, as he should take an internship for the term of 6 months. This is equalised with the education.

In Ukraine the fee for internship is symbolic. The amount of fee is defined by the advocate self-governing bodies, and it is around 500 USD. The mentors of interns are experienced lawyers.

During 6 months and intern should prepare 3 reports, which shall serve as confirmation, that he has completed internship plan, which includes theoretical, as well as practical knowledge. After successful completion of internship a certificate is issued, which grants the intern the right to practice law. This is stipulated by the national law and our association directs its efforts towards insuring, that lawyers have opportunity of professional development. The lawyers have opportunity of attending workshops, round tables and other educational events, organized by us, and improve their qualification.

As to the credit point, lawyers have obligation to accumulate 30 credit points during 3 years, out of which as a minimum 6 credit points should be in advocates' ethics. During one year a lawyer should accumulate no less than 10 credit points, and every advocate has to report to the Agency where and how many credit points he has accumulated during the year. If a lawyer accumulates 30 credit points during 3 years he gets a certificate, confirming his professional development. If a lawyer does not comply with these requirements, disciplinary sanctions shall be imposed on him. So far we have quite loyal attitude towards lawyers, who do not comply with this obligation, as our Bar Association has been founded only 4 years ago, and we cast a blind eye on this issue yet.

Professional development is free of charge. In 2015 around 30 000 advocates participated in professional development trainings, for which purpose were organized around 60 relevant events. In regions local self governance bodies organized around 4-6 events for the purpose of promotion of professional development of local advocates. Trainings for advocates are conducted not only by qualified advocates, but by judges as well. We also provide to them printed and electronic materials, we also have a website, where videos are published, which advocates can access to obtain information free of charge. We have also founded a legal entity – High School of Advocates, which is not public entity and is fully funded by us. The National Bar Association is the founder of the school and we are fully responsible for control over its activities.

## **Discussion:**

### **Irakli Kandashvili – the Executive Board member:**

1. What criteria should a mentor advocate comply with, so that he is entrusted with the responsibility for promotion of professional development of a future advocate and prepare him for entering the profession?
2. Do you have a credit transfer model?

**Oksana Kadenko, representative of Ukraine:**

1. Under the Bar Council there is an experts' council, where those, interested in becoming mentors could apply and the council conducts their certification.
2. We have the credit point transfer model and if a lawyer has accumulated more than 30 credit points during the 3 years, during following three years shall be transferred 10 credit points.

**Svetlana Volodina, representative of Russia**

We have different methods of professional development. Lawyers can develop professionally at the annual conference of the federal chamber. In regions are set up specialized educational centers for advocates. There is no requirement of annual mandatory training hours. During 5 years an advocate should accumulate 100 credit hours. Advocates can accumulate necessary credit hours through participation in conferences, writing of thesis and articles. We have introduced new system for advocates, which ensures, that they can electronically follow the credit hours, collected by them.

In Moscow region trainees and assistants can undergo trainings free of charge. In the qualification chamber there are 5000 members. Members of the qualification commission convene twice per month and consider issue of granting of the status of an advocate. We also have distance learning model, which means that simultaneously around 500 users can get acquainted with the teaching methods of the chamber. Advocates have access to the distance learning portal through a registration number. Of course this is not a large number, have access to distance learning.

**Engin Unsal, representative of Turkey:**

Unfortunately Turkey is the only country, where no exam has to be passed for the purpose of entering into the profession. This is the subject of debates, as this hinders professional development in our country. There are 170 universities in Turkey, out of which in 80 universities there are law departments. Students undergo 1 year internship in courts and this is sufficient to become an advocate. Turkish Bar Association applied to the Ministry of Justice with the request of introducing of the exam.

**Irakli Kandashvili, the Executive Board:**

If Turkey regulates this issue, the Georgian Bar Association is ready to share with you with its experience.

**Vitalie Tabarta, Representative of Moldova:**

In Moldova it is mandatory for an advocate to have a legal background. Those, who want to become advocates, apply to the Collegium of Advocates and the Council of Advocates and request internship. Internship lasts for 18 months. They have to pass admission exam, consisting of 400 tests. To become an intern, the candidates have to answer correctly to 350 questions. In case of passing of the exam candidates pay around 100 EURO, which is the fee for 18 month training. The intern and mentor conclude agreement. Mentor should have a 5 year practical experience, and he should submit documents, confirming that he can employe the intern for the period of internship. After the Council of Advocates approves of the above referred agreement, the intern shall be in subordination of the mentor advocate. The latter may pay him remuneration too, and the intern attends the court proceedings, although he is not authorised to participate in criminal proceedings in the period of internship. After completion of internship the intern shall pass an exam in front of the licensing commission. The Ministry of Justice upon nomination by the Collegium of Advocates, shall grant him an advocate's certificate.

As to mandatory credit hours, that advocates have to accumulate during the year, in 2002 advocates had to accumulate 40 credit hours. Currently the Parliament is considering reducing the mandatory credit hours to 20 hours per year. Currently there are around 13 schools on the market, which unfortunately are not accredited. The school of advocates does not have the system of selection and accreditation of trainers.

In 2007 was adopted the Law on Legal Aid. There are around 3000 advocates in Moldova. Currently around 500 advocates are undergoing continuing legal education training free of charge, which is funded by the state. Only those advocates can participate in proceedings in the sphere of juvenile justice, who have undergone specialised trainings. Only licensed advocates can represent clients in the court. In given regard amendment to the law was entered in 2012, hence there is high interest towards getting the license.

Around 50% of candidates, who enroll for training, do not pass the exam. In such case they have the opportunity of passing the exam for the second time during following 3 years. If they fail to pass the exam for the second time too, for three months they undergo additional internship and have the right to try to pass the exam twice. The state allocates the funds for training of 500 candidates from the state budget. Last year around 1 200 000 EURO was allocated from the state budget.

**Ignas Vegele, representative of Lithuania:**

There are around 2000 advocates and 800 advocates' assistants in Lithuanian Bar Association. All of them are members of the Br Association.

To become an advocate candidates have to have a 2 year experience of work as advocate's assistant. To become an assistant interested persons do not have to pass an exam. It is sufficient to have a law degree. After 2 years of work as assistant they can become advocates through passing of qualification exam. After that advocates have to participate in professional development activities and accumulate credit hours. The fee for one training (4 hours) is 500 EURO. An advocate should participate in at least 3 trainings per year. We are preparing draft amendments, according to which a unified exam for advocates, judges and prosecutors shall be introduced.

**Discussion:**

**Pier Jovani Traversa, representative of Italy:**

Who shall be responsible for functioning and administration of unified exam system?

**Ignas Vegele, representative of Lithuania:**

The Ministry of Justice.

**Shahmar Mammadov, representative of Azerbaijan:**

Professional development and training plays important role in successful fulfillment of professional duties by an advocate. There are several stages to be passed, before a person can become an advocate in Azerbaijan: exams, interview and training, offered by the Academy of Justice. Advocates are permanently involved in professional development activities. The Academy of Justice conducts training, retraining, and development of professional skills of advocates through trainings, workshops and conferences.

Professional development of advocates can be divided into two parts: first is for those persons, who have not received the status of an advocate, but have passed written and oral exam. The Academy of Justice offers them activities, focused on professional development. Representatives of the second group are advocates, who have already been granted relevant status and for them are also conducted conferences, trainings and workshops on different topics. Judges and prosecutors also participate in events, organized by the Academy of Justice, which ensures, that such events are more effective and beneficial. The Collegium of Advocates provides to participants free legal materials. Also, articles published by advocates contribute to their professional development.

**Galina Radiloveca, representative of Latvia:**

In Latvia a person can become an advocate in 3 different ways: higher education in the sphere of law and sufficient legal practice; the Doctor's Degree in the legal sphere, and in

such case a person shall be accepted in the Collegium of Advocates (currently a working group is considering entering amendments to the Law on Advocates, according to which holders of Doctor's Degree shall also be obligated to pass admission exams); and third method – a 7 year experience of work as assistant of acting advocate.

Exams are conducted twice a year. 30% of persons, taking part in the exam successfully pass it.

A lawyer, who becomes a member of the Collegium, during first 5 years works as assistant and fulfills following tasks: works for different institutions, publishes articles and papers, makes presentations and conferences, passes 2 exams in civil and criminal law, and then through mentor undergo practice in courts. Under supervision of mentor during the year he should take part in 2 criminal law and 2 civil law proceedings.

After receiving the status of an advocate a person has to accumulate 16 credit hours per year. We do not have the system of transfer of credits. Educational activities are sometimes sponsored by Educational Council, where preference is granted to inviting advocates from regions. For the rest of the training a fee is charged. There is limited number of trainings and those willing to take part in them have to register through internet.

Amendments are entered to the law, according to which sanctions shall be imposed on advocates, who shall fail to accumulate mandatory credit hours and they shall have to pass exam for confirmation of their qualification.

**Petrut Ciobanu, representative of Romania:**

Romania has the same system as Moldova. There are around 33 000 advocates in Romania. Population of Romania is around 20 million. You have to graduate a university to become an advocate. Then you pass the exam, after which you undergo professional development training, and pass another exam. A judge can become an advocate without passing of the exam, but currently the law is being amended to change this.

**Ryszard Wilmanowicz, representative of Poland:**

In order to become a lawyer in Poland, you have to hold Masters, or similar degree and should have impeccable reputation, should undergo relevant training and pass the exam. The exam contains 150 questions, out of which a candidate has to answer correctly to 100 questions, although this is not the only method of becoming an advocate. It is also possible to pass an exam separately. It is a 3 year course, offered by National Bar Association. The course envisages passing of written, as well as oral exam. Around 40-50% of students pass

the exam successfully. On regional level on average around 80% pass the exam. The written exam lasts 5 days and the spheres are: criminal law, business-administrative law, and professional ethic.

**Summary:**

**Irakli Kandashvili, the Executive Board:**

As we have seen from the discussion, our associations have more or less similar models and systems. The main challenge, which has been identified, is clearly seen on the example of Lithuania, which is the independence of the profession. In given regard our associations and representatives of legal profession have to support efforts of Lithuanian Bar Association.

In the sphere of training all associations retain independence from the standpoint of planing, as well as in funding. In regard to the training component the trend is, that the Bar Associations have control over this aspect and the main difference is in the mandatory credit hours. Also, several countries have different credit hour model, where advocates have to accumulate total mandatory credit hours for 2-3 years, while in our case there is certain number of mandatory credit hours, which advocates have to accumulate during the year. Also, there is the trend of introduction of electronic learning in majority of our countries.

## **PARALLEL SESSION I. THE ROLE OF BAR ASSOCIATIONS IN PROFESSIONAL DEONTOLOGY**

The representative of **CCBE Lucy Dupong** in her presentation stressed in her opening presentation the role of Bar Associations in increasing of acceptance of advocate's profession. She also noted, that associations should cooperate more closely with politicians and citizens, to increase their trust in lawyers, as well as judges. A lawyer is an intermediary between a citizen and a court. Gaining of clients' trust is possible only through promotion of high ethical standards. For insuring proper functioning of justice development of lawyers activities is of crucial importance.

The Chairman of **Georgian Ethics Commission Tsitsino Tskhvediani** spoke about the need of entering of amendments into the Law of Georgia on Advocates, which would promote to introduction of flexible system of disciplinary measures. At the General Meeting of advocates

amendments were entered into the Regulations on Disciplinary Responsibility of Advocates and Disciplinary Proceedings. Namely, according to the amendments at the stage of proceedings one member of the Collegium shall have the authority of inquiry and it shall be mandatory for an advocate to submit his explanations. According to explanations of the Chairman the types of disciplinary sanctions are limited to those, stipulated by the law, which does not allow the commission to enter amendments in the sanctions at the General Meeting. Also, in whole range of cases when Ethics Commission submits a case, it is problematic to collect a 12 person quorum which is necessary for consideration of the case. It should be amended and the quorum should be reached by 8 members out of the composition of the commission. Also, another problematic issue is the fact, that the name of advocates, who have been subjected to disciplinary sanctions, is stated openly in the decisions of the commission. The question arises, whether this is in violation of the obligation of maintaining of confidentiality of personal data of advocates. In the event of publishing of the decision the fact that the name of an advocate is stated openly, has disciplinary purpose, without which it is difficult to ensure, that the clients shall get adequate quality services. The commission publishes decisions upon their entry into force, although there is the opinion, that when disciplinary sanction is lifted, the decision should not be published on the website of the association. Also, another issue worth mentioning is the rule of appealing of decision of the Ethics Commission, which is not specified in detail and the Disciplinary Chamber of the Supreme Court of Georgia considers appeals of advocates as provided by the law. The Disciplinary Chamber is composed of judges, who are considering civil or administrative cases, which excludes their deep knowledge in the sphere of professional standards of advocates. Ethics Commission apart from considering disciplinary offences, also issues recommendations and it should be noted, that interest of advocates towards these recommendations is increasing. Depending on their complexity the issues are considered by the collegium, or referred to the Ethics Commission, to be considered by its full composition. Ethics Commission is initiating regional meetings for advocates, which shall promote to sharing of information regarding professional duties of advocates, listening to standpoint of advocates themselves, which shall promote to improvement of quality of work of the Commission.

**Lucy Dupong** stated, that it is of crucial importance to promote or increasing of citizens and courts trust towards the profession of lawyers. A disciplinary body should work in such manner, as not to violate basic human rights. It is expedient, that Ethics Commission consists of two different organs, one of which shall work only on disciplinary matters, while another shall work on the issues related to ethics. These two functions should be separated.

Transparency of activities of the Commission shall be reached through delimitation of these two functions. It should be mandatory that a lawyer participates in disciplinary proceedings and there shall be no excusable reason for his failure to attend such proceedings. The principle of proportionality should be adhered to in case of imposition of any sanctions. Ethics Commission should honor requirements of the European Convention of Human Rights. In the European Court of Human Rights is an established practice in regard to disciplinary proceedings. An advocate, subject to disciplinary proceedings should be a member of Bar Association.

In Luxemburg the President of Bar Association conducts inquiry in regard to complaint. The respondent advocate shall submit his explanations, and the protocol of hearing shall be drawn, which shall be made available to the advocate. A fine can be imposed on an advocate, which is a very effective measure. Depending on the gravity of the offence the amount of fine shall be changing proportionately. In the event of initiation of disciplinary proceedings the case shall be referred for consideration to a Disciplinary Council, composed of 15 members. The Council shall examine the case, and in the event of establishing of the fact of occurrence of offence, the Disciplinary Council, composed of 5 members shall arrive to decision. The above referred Council is independent. The accused advocate has the right to appeal the decision of the Council. The appeal of the advocate shall be considered by 2 judges of the Supreme Court and 3 lawyers. This system functions quite effectively.

Representative of **France** noted, that in France there are two independent bodies: the disciplinary and punitive. The disciplinary body is composed of lawyers, and the final decision is reached by ordinary court of appeal. The procedure is quite cumbersome, which promotes to the fact, that procedures against lawyers are not initiated frequently. That is why in France was set up a Disciplinary Commission and all Bar Associations have their local disciplinary commissions. There are 160 associations in France and 24 regions. Members of the commissions are lawyers. Young lawyers should undergo training on advocates' professional ethics immediately upon entry into the profession, to ensure that they are fully informed regarding their disciplinary liability. Around 85–87 % of population of France considers, that lawyers are interested in clients' money and does not care properly of his clients' interests. When the population was asked the question regarding individual approach to the clients' case, the response of population was positive. Representative of a client stated, that they have been fighting for 20 years for attaining, that the issue of responsibility of a lawyer should be considered by lawyers. New laws were adopted, which amended the rules of forming of the commission. Substantial amount of resources of the association are allocated for activities of the disciplinary body. On the one hand a lawyer can avoid

disciplinary liability for failing to pay his membership fee. Lawyers can check electronically whether the membership fee is due. Failure of paying of the fee can serve as grounds for termination of advocate's membership in the association, which hinders effective enforcement of disciplinary proceedings.

**Lucy Dupong noted**, that financial sustainability of associations is extremely important, that is why lawyers should be taught, that for ensuring independence of profession of lawyers it is important, that they pay the membership fees. Termination of association membership for failure of payment of membership fee is not the best way out, as more members means more income.

**Tea Cheishvili, member of Ethics Commission of Georgian Bar Association** stated that Ethics Commission is composed of 15 members. The Commission consists of groups of 3 members. Different collegiums consider cases to be resolved through procedural rules and hearing, although one and the same member has the right to consider one case through procedural rules, while he can also participate in hearing of another case. The member of the Commission was interested to hear how in Luxemburg the functions of commission members were delimited, and also what kind of forms of disciplinary liability existed in the Country, what was the recommended as sanction, for example warning, suspension of authority for the term of 6 months; also, whether the practice in Luxemburg was homogeneous, and what are the rules of appealing of decision.

**Lucy Dupong** noted that Ethics Commission should work in such manner, which shall preclude one and the same members of the commission to consider cases at both stages.

In Luxemburg warning is not considered as disciplinary sanction and is a light form of responsibility. As for the disciplinary sanctions, following variations may apply: reprimand, or fine, in the amount from 560 USD to 21 000 USD, also suspension of the right to implement advocates activity for the term of 5 years with the possibility of additional probation period.

Representative of **Moldova** stated, that Disciplinary Commission is composed of 11 members. Sanctions are broader: warning, reprimand, fine. Revocation of license is not frequently used as a sanction, as the law does not state clearly, when a lawyer's license can be revoked. One of such grounds is gross and regular violation of lawyer's duties, or failure to implement pro bono activities. If a complaint is related to the fact, that a lawyer took more money, than stated in the agreement, this can serve as grounds for termination of his membership. Several complaints may be filed in regard to a lawyer, which can serve as basis for termination of his

license. In 2015 the Commission received 510 complaints, out of which 5 lawyers license was terminated. Complaints are distributed to reporting members of the Commission. The Commission convenes minimum once a month and 8 members are considered as quorum. As a rule there is no problem with reaching the quorum. The Commission reaches decision whether to initiate disciplinary proceedings, and at the following meeting decides on the issue of imposition of disciplinary sanction. Lawyers do not have favorable opinion of disciplinary proceedings and in the event of refusal to participate in proceedings, they can be warned or reprimanded. The adherence to the decision by the lawyer, towards whom it was reached, is compulsory. The decision on termination of license is approved by the Minister of Justice. In the Commission are included 2 representatives of public and one representative from the Ministry with the right of vote. Association wishes, that representatives of public, i.e. non-lawyer members are referred to as observers without the right of vote.

**Lucy Dupong** noted that in Luxemburg each member of the Commission has a deputy, and in the event, he can not attend the meeting, his replacement shall attend it.

**Koba Bochorishvili, former member of Ethics Commission of Georgian Bar Association** asked how decision on imposition of fine was enforced.

Representative of **Poland** noted, that the Commission applies to court with the request of enforcement of imposed fine. When a lawyer does not attend sessions of the Commission, the Commission can apply to court in writing and the court shall obligate the lawyer to attend the session. The amount of fine depends on the gravity of violation, although there are no strictly prescribed rules in given regard. In the event, when court shall find a party guilty, such party shall carry expenses, related to court proceedings.

Representative of **Latvia** explained that the Disciplinary Commission was set up in 2004. The Law on Advocates was adopted in the 15<sup>th</sup> century. The Association regularly intervenes positively in issues, related to ethics. The Association shall soon celebrate its 100<sup>th</sup> anniversary. The bodies responsible for ethics, and generally ethics was formed, when Latvia joined CCBE. Previously the Association had internal procedures, it was examining cases and arriving to final decision, but only one organ, the Council was responsible for that. Disciplinary procedures are not only the right of the Association, but also its obligation. The Association should be responsible for taking care of its members, they should have the right to appeal its decisions in the court, as this is their right. The process is divided into two stages: the deputy examines the case, and issues recommendation on initiation of proceedings. The final decision is reached within the period of 3 months by a collective organ consisting of 9 members. A lawyer has the right to participate in oral hearing. The

Commission is obliged to listen to reasoning of a lawyer, and in majority of cases they submit their explanations. Per year there are around 5 cases considered. If a lawyer does not attend the session, the case shall still be examined. There are 1400 advocates in Latvia. There are following forms of disciplinary sanctions: warning, reprimand, suspension of the right to implement professional activities for the period of up to 3 years. There is opportunity of reviewing of decisions by court, but during 12 years only 12 decisions were appealed. Decisions are substantiated, which is very important, as it serves as guidance for other lawyers. The Ethics Commission considers cases and adopts guidelines for lawyers. The Ethics Commission cooperates with the Ethics Commissions for judges and prosecutors. All the above referred commissions consider similar issues. The cases are considered individually, but this contributes to formation of uniform practice. Also, guidance materials are being published. The personal data is struck out from the decisions, but they are published.

**Representative of Armenia (KAREN SARDARYAN)** posed a question, whether the Code of Ethics should be applicable to lawyers, when they make public statements through TV, but speak not as a lawyer, but as a citizen. Also, are the professional duties violated, when one lawyer is telling to a client, that the previous lawyer's position in regard to the case was not correct, which was detrimental to his interests. The previous lawyer has submitted a complaint, that the lawyer, claiming so, was undermining his professional reputation.

In Armenia there are different forms of disciplinary sanctions, starting from warning, and ending with revocation of license. The Advocates are responsible to participate in trainings at their own expense. The School of Advocates permanently offers such trainings within the framework of mandatory continuing legal education. Member of the Council has the right to miss the sessions of the Council only 3 times. In the event of missing of more sessions, the member shall be dismissed from the membership of the Council. Representative of Armenia posed a question, whether the Code of Ethics should be applicable to lawyers, when they make public statements through TV, but speak not as a lawyer, but as a citizen. Also, are the professional duties violated, when one lawyer is telling to a client, that the previous lawyer's position in regard to the case was not correct, which was detrimental to his interests. The previous lawyer has submitted a complaint, that the lawyer, claiming so, was undermining his professional reputation.

Representative of **Lithuania** explained, that their Code of Ethics was applicable to a lawyer in the course of implementation of his duties, as well as beyond that.

Representative of **Poland** explained, that in Poland the situation was the same, and that lawyers are obligated to adhere to requirements of the Code of Ethics when they are making public statements as private persons as well. The public should not have impression, that a lawyer is undermining the reputation of the profession.

Representative of **France** explained, that ethical norms apply not only during work hours, but in private life as well. A lawyer may be held responsible if he behaves unacceptably in his private life, and lawyers have to treat with caution the reputation of the profession.

Representative of **Turkey** noted, that a lawyer should respect profession both in his professional, as well as private life.

Representative of **Lithuania** stated, that if a lawyer sees, that his colleague is deceiving his client, he is obligated to notify the client regarding this.

## JUNE 21

### BAR ASSOCIATIONS ROLE IN DEFENDING LAWYERS RIGHTS

**Lucy Dupong** made opening remarks and summarised several aspects, which need to be taken into consideration for insuring an effective work of the Ethics Commission.

1. In some countries members of Ethics Commissions have their replacement, i.e. deputies, who attend sessions of the Commission if they cannot attend them.
2. It is desirable, that sessions of Ethics Commission are arranged after court sessions.
3. Membership of the Commission should be divided into two parts: the group, which is examining the case, and the group, which is arriving to decision on the basis of materials, collected by the group of examiners. It is important, that the same members are not included in both groups.
4. Ethics Commission should be independent, objective and ensure safeguarding of requirements of the European Convention of Human Rights.
5. The disciplinary sanction should be proportionate to the violation. The types of sanctions can be expanded. For example, it was proposed to introduce a fine as a type of disciplinary sanction.

The **Chairman of the Ethics Commission of Georgia, Tsitsino Tskhvediani** noted, that in some countries members of Ethics Commission, who are responsible for imposition of disciplinary sanctions are lawyers, while in other countries the Commission is composed of

lawyers, as well as non-lawyer members. Georgian model, which envisages 12 lawyer, and 3 non-lawyer members is acceptable, as such division of members of the Commission promotes to transparency of its activities. The Ethics Commission plans its sessions at such time, when court hearings are finished. Ethics Commission shall meet independently, summarize the results of 2-day meetings, and arrive to decision as to which practice to replicate in its work.

### **Summary of results of Training working group**

**Pier Giovanni Traversa** stated, that within the framework of the research, conducted in the sphere of training was examined experience of 28 countries. The purpose of the research was identification of best practices in given sphere, but the researchers came to conclusion, that best practice for each country is different. Mainly the attention should be focused on the following aspects: analysis, explanation and description of training activities; dissemination of information on trainings; the trainings should answer the demand of lawyers on the market; the need of use of modern technologies in the process of trainings, and evaluation of trainings by participants.

**Irakli Kandashvili** noted that for Georgia it was extremely important to get acquainted with experience of other countries, as every Bar Association has different issues on the agenda. It appears, that there are differences from the standpoint of the number of years, during which lawyers have to accumulate credit hours. In the procedure of selection of experts and trainers there are a lot of similarities; the process of use of IT technologies for the purpose of distance learning is improving; In almost all Bar Associations there are cases, when members of the association do not fulfill their obligations related to accumulation of mandatory credit hours. It should be noted, that continuing legal education in Georgia, as well as Ukraine is free of charge.

**Irakli Kandashvili** also noted that they have examined the French model of admission in the association, and GBA is considering of introduction of this model. But another issue is, as to how the person, to be admitted into the profession should be evaluated: through exam, or some other method. Also, it is important what should be the subject-matter of raining for those, who are entering the profession. The association is going to offer them following components: legal ethics, writing of legal texts and management of a law firm.

**David Asatiani** opened the session on protection of the rights of lawyers and talked about the role of lawyers in the process of execution of justice. The lawyers are responsible for identification of violations, committed by representatives of public bodies, and hence, a

lawyer's profession is related to certain risks and they are perceived as an impeding factor, that is why the lawyers' rights are often violated.

**Maria Slazak** offered to the members of the working group to share with best practices, and solutions to problems, that they currently face.

**Zaza Khatiashvili** talked about restoration of rights, cooperation on international level for the purpose of assisting unlawfully condemned lawyers, and activities, focused on promotion of independence of the profession.

**Maria Slazak** identified following issues, in regard to which further activities should be carried out:

1. Implementation of professional activities without discrimination;
2. Freedom of expression;
3. Free access to client;
4. Maintaining of professional confidentiality;
5. Ensure equal treatment of defence lawyers and prosecution by courts.

Representative of **Poland** noted that in Poland the lawyers enjoy relative independence and freedom, although there is the problem of tapping of telephone conversations of lawyers and interception of electronic correspondence by the governmental bodies. The role of Polish association is ensuring correct perception of the role of lawyers by the society, for which purpose the Ethics Commission tries to identify violations, committed by lawyers and punish them correspondingly. There are quite strict sanctions, which ensure attaining of the above referred aim.

Representative of **Latvia** stated that there are no serious problems from the standpoint of violation of lawyers' rights and nobody interferes in their activities. The Bar Association cooperates with Prosecutor's Office, as well as judges. They have unified vision in regard to their ethics. They also have common goals and conduct joint conferences for the purpose of strengthening of cooperation. Upon recommendation of the Venice Commission was set up a Legal Council, composed of lawyers, notaries, judges, members of Parliament and etc. This is important for enhancing of cooperation and helps to adoption of common approaches towards key issues.

Representative of **Armenia** stated that they entered fundamental amendments to the Constitution and lawyers were involved in elaboration of these amendments. According to

the amendments free legal aid can be rendered only by an advocate. The Constitutional Court ruled, that the monopoly of lawyers in civil law cases does not contradict the Constitution. They have concluded MoU with police, on the basis of which were set up 2 quick response groups, composed of lawyers and policemen. The groups immediately respond to the facts of violation of lawyers' rights. These groups help to solve the problems in operational manner and it is not necessary to apply to court and undergo cumbersome procedures any more. Also, on the Basis of MoU lawyers have the right to apply to the Public Defender, who in his turn shall apply to the Constitutional Court for the purpose of establishing compliance of the law with the Constitution.

**David Asatiani** noted that Georgian lawyers work on the draft law, according to which during the search of lawyer's office and correspondence a representative of GBA should be present, otherwise this measure shall be deemed unlawful.

**Representative of Armenia** noted that their law forbids search and seizure of materials in the lawyers' office.

**Maria Slazak** noted that in Poland representatives of legal sphere convene and elaborate resolutions. They cooperate actively. She also stated, that she shall send agreement, so that Georgia also starts working in the same direction. The Council of Europe elaborated conclusion, according to which in the opinion of judges it is important to cooperate with lawyers. The position of European judges in given regard is becoming more clearly pronounced and Georgia judges should adopt similar approaches.

Representative of Ukraine noted, that in Ukraine there is no law, which would contain the mechanisms of protection of lawyers. The lawyers were protesting against huge tax burden imposed on them, and they had to interrupt their work for 2 months to attain results. The independence of lawyers is not systemic, and they face numerous problems. They set up committees for protection of lawyers, which work in online regime on 24 hour basis and respond immediately to the cases of violation of lawyers' rights. On the basis of agreement, concluded with the lawyer, the members of the Committees become representative of his interests and ensure, that all actions taken towards the lawyer are legitimate. Also, they conduct joint conferences with the judiciary, which helps to improve the state of affairs. Representative of Ukraine expressed hope, that CCBE shall continue rendering assistance in future as well.

**Maria Slazak** confirmed that they are aware of the situation in Ukraine.

**Tamila Kutateladze**, Georgian lawyer: with assistance of the Chairman of GBA and CCBE lawyers are better protected. We want to introduce amendments to the Code, according to which impeding activities of a lawyer shall be punishable by law. GBA does not have such quick response teams, which should be involved in the event of search of a lawyer's office. We may start thinking in the direction of conclusion of MoU with the ministry of Justice in future. Lawyers up to now have the sensation, that they are unprotected. On the legislative level the legal profession is not duly protected, and only the Chairman responds in a speedy manner to the cases of violation of lawyer's rights.

**Irakli Burduli**, dean of the Tbilisi state University noted that the legal culture promotes to independence of profession. The biggest challenge for legal profession is: 1. Lack of highly professional specialists of legal sphere, which is impossible to be attained without improvement of the quality of education and work; 2. Unavailability of indepth dialogue within the representatives of the profession, and representatives of the legal sphere should speak the same language; Perhaps in transformational society, where the legal culture is less developed, more efforts should be directed towards introduction of social guaranties for lawyers.

**Maria Slazak** noted that more attention should be paid to education of lawyers, including teaching of professional ethics.

**Lucy Dupong** added that in the course of educating of lawyers the European Convention of Human Rights and the practice of the European Court of Human Rights should be included. This should serve as foundation for education.

**Maria Slazak** underlined that young lawyers should be taught main acts.

Representative of **Azerbaijan** stated that one of the key requirements is independence of lawyers. For qualified protection of clients internal and external independence of lawyers should be ensured. Also, the state should revise issues related to social protection of lawyers, their work load, terms of assigning of pensions. Also, only lawyers should be members of the disciplinary council. For the purpose of adherence to the principle of adversarial approach legislative amendments need to be introduced, as the prosecution and court have close relations, which gives rise to suspicions in regard to independence of judiciary. The representative did not have specific proposals in regard to legislative amendments, but according to his assessment if a lawyer is forbidden from contact with a judge, the same should be applicable to prosecutors.

**Maria Slazak** noted that Azerbaijanian Bar Association should come up with relevant proposals. Also, unfortunately, there are lawyers, who do a lot for protection of human rights, get acknowledged for their efforts, but they are not members of association and in reality, are not advocates.

Representative of **France** stated that they had to fight a lot for protection of lawyer's rights too. Currently in France there may be fewer problems in given regard, although all associations have concluded Memorandums of Understanding with Magistracy, to overcome problems jointly. There shall be no effective justice without strong and well organized lawyers. Lawyers don't bring an oath any more, and it was replaced by deontology.

Representative of **Lithuania** explained that strong bar association with high ethical standards, continuing legal education, and social guarantees is very important. For the purpose of improvement of cooperation we invite judges and prosecutors.

Representative of **Turkey** explained, Turkish Bar Association offers medical insurance, protection of human rights of lawyers and development of law and justice. Turkish Bar Association has 90 000 layers. There are cases of pressure over lawyers, although the association is trying to respond to such cases in prompt manner.

**Moldova** representative explained, that the association is faced with the task of retaining the success, that we have achieved during years. In the event of arresting of a lawyer the union of lawyers shall be notified regarding this. In the union there is an organ of prompt response. Representative of Moldova came up with proposal of adoption of declaration for protection of Ukrainian lawyers, as in Ukraine there are ongoing negative processes towards lawyers.

The representative of **Ukrainian Bar Association** noted, that one of the members of the association, Iuri Grabovski was killed on March 6 of this year. He was tortured and made to bring the oath, that he shall not defend Russian hostages. This was 4<sup>th</sup> case of killing of a lawyer and the profession is related to high risks. The representative of Ukraine requested adoption of a statement, including in regard to Grabovski's case. Currently 6 lawyers are representing interests of his sister, who is the injured party.

Representative of **Italy** stated, that in the course of training on human rights can be used a web-program of the European Court of Human Rights, which is free and materials are available in electronic format. These are video materials and documents in pdf format. Each module has a test, which assists the user in obtaining and analysing information.

**Irakli Kandashvili** noted, that GBA has integrated in its trainings HELP program. On the basis of HELP module, dedicated to the subject of the right of asylum, was developed a learning module and around 30 lawyers have already undergone this training. In Georgia the program is being promoted by the GBA.

Irakli Kandashvili agreed with Irakli Burduli's proposals, that the Association is trying to implement. The Association expresses its readiness to maintain dialogue, wants to start joint trainings; the association started discussing the need of organizing of joint working meetings, which shall be held in the nearest future. In the conference, dedicated to the Layers' Day took part judges and prosecutors as well. As to the education, the Association has continuing legal education system, which is permanently refined and developed. The association is permanently ready for dialogue in regard to education. As to social guarantees, the association, and namely Mr. Khatiashvili is working closely with administrative bodies. A draft law has been developed, which offers guarantees of independence of lawyers and the draft law states, that interference in the activities of a lawyer should be considered as offence. The draft law has not been adopted yet.

Representative of **Russian Federation** stressed, that the developments in countries, represented at the conference show, that there are certain commonalities between them, which have been inherited from the soviet period. In Russia the prosecution has closer links with the judiciary, than the lawyers. Lawyers have to be more courageous, to fight against this. The authorities never like lawyers. The state is organized in such manner, that human rights are not developing, and authorities consider, that there are other more important issues, than human rights. The lawyer's profession should develop in the right direction and consider, what the profession can do for society. Legal profession is a self-governing profession, and the association is the only body, which can revoke a lawyer's license. In Russia the disciplinary body develops the Code of Ethics and the rules of disciplinary proceedings. There is the law, but it is important how it is enforced. There still exists the risk to professional confidentiality, and offices are searched very often.

Representative of **Belorussia** stated that the rights of lawyers and the guarantees of protecting of their activities should be provided by law. All changes need to be achieved through close cooperation with the Parliament and Government. All governments are trying to abridge the rights of lawyers. Currently lawyers are working on amendments to the Law on Advocates, as the guarantees should be provided by law. The Parliament does not support this initiative, although gradually lawyers shall reach the set goals.

**Maria Slazak** added that all Bar Associations, taking part in the conference can rely on support of international community, although they have to assess the state of affairs in the country and plan relevant activities.

The Chairman of the GBA suggested to the participants of the conference to elaborate an apolitical act, a concept of protection of lawyers' rights, which shall be jointly developed by representatives of Georgian and Ukrainian Associations, and disseminated to Bar Associations of other countries through email.

**Maria Slazak** summarised the conference, and focused her attention on position of different countries in regard to protection of lawyers' rights. Namely, she I underlined importance of the following issues:

1. Disciplinary proceedings should be more effective, timely, and society should be informed regarding them;
2. Concluding of agreement with police for the purpose of ensuring of rapid response;
3. Concluding of agreement with the Public Defender, so that he submits proposals to the Parliament.
4. Improvement of teaching of ethics of lawyers.
5. The role of dialogue between the lawyers.
6. Importance of international cooperation.
7. Social support of lawyers by state.
8. Setting up of rapid response committees; inadmissibility of search of lawyer's office/apartment and documentation without informing the association.
9. Importance of continuing legal education program.