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"Strengthening the profession of lawyer in line with European standards"

COMPARATIVE REVIEW

Procedural and institutional setup of the functioning of lawyers in Armenia, Belarus, Georgia, Moldova and Ukraine

November 2019 – February 2020

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List of Abbreviations

ALFG	Association of Law Firms of Georgia
CoE	Council of Europe
EPD	Electronic Public Defender
FLA	Free Legal Aid
GBA	Georgian Bar Association
LAS	Legal Aid Service
OPD	Office of Public Defender
PGG	Partnership for Good Governance
EU	European Union

INTRODUCTION

The comparative review is undertaken in the framework of the regional project "Strengthening the legal profession in line with European standards" (further – Project), which is funded by the European Union and the Council of Europe and implemented by the Council of Europe. . The Project is being implemented under the "European Union/Council of Europe Partnership for Good Governance". The participating countries of the Project include Armenia, Belarus, Georgia, Moldova[1] and Ukraine.

The comparative review was conducted in November 2019 – February 2020 by two international consultants who were assisted by national consultants in Belarus, Georgia and Moldova. Mr Arman Zrvandyan[2] provided analysis with regard to Armenia and Georgia, while Mr Oleksandr Ovchynnykov[3] – on Belarus, Moldova and Ukraine, as well as an overall editing of the comparative review. Upon submission by the consultants the comparative review was additionaly edited by the Council of Europe.

The international experts conducted first a desk-work analysis of the applicable legislation on the bar (typically, the law on the bar). Then, the international experts carried out fact-finding missions to the participating countries. During these missions several meetings were held with the representatives of the bar associations, the judiciary, the state agencies and law societies. On the basis of these missions and the analysis of the relevant legislation the international consultants elaborated reports on each participating country. A special attention was paid to the issues of gender and the particular needs of young lawyers.

The comparative review is primarily focused on the comparison of the legal frameworks of the bar in each participating country, including, where relevant, the practical implementation of legal provisions relating to the legal profession. Therefore, the international experts attempted to outline in the most concise fashion the following:

- legal framework of the legal profession
- institutional framework: legal practice and associations of lawyers
- access to the legal profession
- freedom of exercise of the legal profession
- free legal aid
- professional liability of lawyers.

The comparisons of the frameworks in the participating countries are also made with regard to the related CoE standards and recommendations. It is first of all Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyers (the Recommendation[4]) and the relevant case-law of the European Court of Human Rights[5].

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1 For the purpose of this document the Republic of Moldova will be further referred to as Moldova.

2 Member of the Chamber of Advocates of Armenia. Visiting professor of law, American University of Armenia.

3 Advocate, Strasbourg Bar Association, France.

4 Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies).

5 Among the most important judgments and decision of the European Court on that matter: *Michaud v. France* (judgment of 6 December 2012, appl. no. 12323/11); *André and Another v. France* (judgment of 24 July 2008, appl. no. 18603/03); *Mor v. France* (judgment of 15 December 2011, appl. no. 28198/09); *Morice v. France* (judgment of 23 April 2015, appl. no. 29369/10); *Nikula v. Finland* (judgment of 21 March 2002, appl. no. 31611/96); *Veraart v. The Netherlands* (judgment of 3 November 2006, appl. no. 10807/04); *Laurent v. France* (judgment of 24 May 2018, appl. no. 28798/13); *Kopp v. Switzerland* (judgment of 25 March 1998, appl. no. 13/1997/797/1000); *Brito Ferrinho Bexiga Villa-Nova v. Portugal* (judgment of 1 December 2015, appl. no. 69436/10); *Steur v. the Netherlands* (judgment of 28 October 2003, appl. no. 39657/98); *Sialkowska v. Poland* (judgment of 22 March 2007, appl. no. 8932/05); *Kyprianou v. Cyprus* (judgment of 15 December 2005, appl. no. 73797/01); *Turczanik v. Poland* (judgment of 5 July 2005, appl. no. 38064/97); *Elci and Others v. Turkey* (judgment of 13 November 2003, appl. nos. 23145/93 and 25091/94); *Niemietz v. Germany* (judgment of 16 December 1992, appl. no. 13710/88); *Dudchenko v. Russia* (judgment of 7 November 2017, appl. no. 37717/05); *Konstantin Stefanov v. Bulgaria* (judgment of 27 October 2015, appl. no. 35399/05);

The comparative review does not provide an exhaustive assessment of the compliance of the relevant national legal provisions and practices relating to the bar with the European standards. Only in cases where such situations of non-compliance are encountered, they are highlighted.

On 11 December 2019, the international experts presented their preliminary findings during the meeting of the Technical Project Committee in Yerevan, which allowed improving of the analysis of the comparative review.

Buzescu v. Romania (judgment of 24 May 2005, appl. no. 61302/00); *Casado Coca v. Spain* (judgement of 24 February 1994, appl. no. 15450/89); *Yaremenko v. Ukraine* (judgment of 12 June 2008, appl. no. 32092/02).

EXECUTIVE SUMMARY

This section provides a summary of the analysis of the institutional set-up and functioning of bar associations in Armenia, Belarus, Georgia, Moldova and Ukraine.

Institutional and legal framework of the legal profession

General observations

In all participating countries the main issues relating to the institutional set-up and functioning of the legal profession are regulated by a special law on the bar. The legal profession is declared to be free and independent. It is usually considered to be distinct from a regular commercial activity even though its paid nature is affirmed in the relevant legal enactments.

Similarities

In all countries the lawyers are members of a unique official bar association. Internal structures of the national bar associations are quite similar and include similar types of governing bodies. The highest self-governing body of lawyers is their general assembly, or congress. In all countries, except Belarus, all positions within the bar associations are elected by their peers without any interference from the state authorities.

Differences and specificities

As regards the "monopoly" for the provision of legal services, it is absolute in all countries in criminal cases. In **Georgia**, it is also reserved to the representation before the second and third instances in civil and administrative proceedings. In **Armenia** representation by an advocate is not required in administrative proceedings and in some cases - in civil proceedings. In **Belarus** legal specialists (not advocates) acting on the basis of a special licence issued by Ministry of Justice[6] are authorised to provide legal services but may not represent clients in the courts. In **Moldova**, the representation by an advocate is general with minor exceptions. In **Ukraine**, it was general until recently, but major reform intended to abolish it is under way.

In **Belarus**, the Ministry of Justice has broad powers with regard to the functioning of the legal profession. In **Moldova**, the Ministry of Justice has certain powers in that respect but they appear to be rather symbolic (such as the holder of the united register of lawyers).

Assessment

it should be recalled that according to the Recommendation, "all necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights" (§ 1 of Principle I of the Recommendation). Pursuant to § 2 of Principle V, "bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public". Additionally, § 4 (f) of Principle V provides that bar associations should be encouraged to co-operate with lawyers of other countries in order to promote the role of lawyers.

The present comparative review clearly demonstrates that, overall, the institutional set-up and the functioning of bar associations in the participating countries are generally compliant with

[6] Advocates also obtain their licence from the Ministry of Justice.

the existing European standards. The legal frameworks of these countries provide that the legal profession is independent and is exercised freely. The state authorities are involved to some extent in the functioning of bar associations in all countries through general regulatory function vested on them. In Belarus and Moldova such involvement might be further assessed with a view to defining if it is not contrary to the European standards.

As regards the legal "monopoly" of advocates, which appears to be a major issue of concern in certain participating countries, it should be recalled that it is not considered as such to be a part of the core European standards with regard to the legal profession. It is also recalled that the case-law of the European Court of Human Rights[7] is only concerned with that "monopoly" in the context of the access to court, where it could prevent citizens from legal assistance in certain circumstances. It is also important to consider and further assess the arguments of those bar associations which defend a full legal monopoly in the light of particular circumstances of their countries.

International cooperation among bar associations appears to be at present on insufficient level in the participating countries. The reinforcement of such co-operation along selected topics would be fully compliant with the European standards.

Access to legal profession

General observations

In all participating countries access to legal profession is subject to certain conditions, such as obtaining a required level of legal education, traineeship, a successful taking of a bar examination and certain other requirements.

Similarities

The requirements to become an advocate are similar in the participating countries. They are intended to ensure that only qualified and capable lawyers can become advocates. In all countries such requirements include the high moral values and the absence of criminal convictions (with minor exceptions). Instances of incompatibility are also very similar.

Differences and specificities

In **Georgia**, **Moldova** and **Ukraine** the incumbent candidates shall, as a rule, pass a bar examination first and then complete a traineeship (which is organised in different ways). In Moldova, there are two examinations: the first – to be admitted to the traineeship, the second – to practice law after the traineeship is completed. In **Armenia** and **Belarus**, the traineeship precedes the taking of a bar examination.

Foreign lawyers have *de-facto* unrestricted access to legal practice only in **Ukraine.** In **Armenia**, foreign advocates are also admitted to practice law subject to a special authorisation of the Council of the Chamber of Advocates. Prior to issuing the authorisation the Council may ascertain that the candidate has sufficient knowledge of Armenian law (it is not envisaged in Ukraine). In **Belarus** and **Moldova** it is required by law to have a suitable "physical" office to be able to practice law. In practice, however, this requirement is subject to control in **Belarus** only.

[7] Among the most important judgments and decision of the European Court on that matter is *Kateryna Makarivna Moldavska vs Ukraine (judgment of 14 May 2019, appl. no. 43464/18 Para. 26).*

In **Moldova**, the candidate to a traineeship shall provide, among other documents, a medical certificate. The purpose of this requirement is not fully clear.

Assessment

Despite significant differences among the rules for the access to legal profession among the participating countries, no major issues of concern could be detected in the framework of the present review. In Belarus, certain restrictions[8] to free access of lawyers to legal practice could be observed, even though such restrictions are explained by certain specific considerations, such as preventing the overconcentration of lawyers in the capital and other big cities to the detriment of the economically disadvantaged regions. In **Moldova**, it appears that the requirement for the candidate to a traineeship to provide a medical certificate could be considered discriminatory and as such not in line with European standards. The access of foreign lawyers to the domestic legal market is regulated differently among the participating countries. Even though there are no international standards in that respect, it appears that the facilitation of such an access, under certain conditions, might contribute to the reinforcement of cooperation, in particular, between relevant bar associations of the participating countries.

Similarly, as regards the requirement for the advocate to have a "physical" office, the bar associations of the participating countries might wish to study and benefit from the experience of **Belarus,** which appears to be the only participating country in which this requirement is applied.

Freedom to exercise legal profession

General observations

Legislation of all participating countries provides that advocates are able to exercise their profession freely, without undue interference from anybody. Typically, the main provisions relating to the functioning of the legal profession are codified in special laws on the bar.

Similarities

In all participating countries the relevant laws on the bar provide for a certain number of guarantees for the legal profession. In each country freedom to practice and prohibition of any interference in practice are legally guaranteed. The lawyer-client privilege is protected in each country. Correlative to this, in each country advocates are subject to strict obligations to protect the professional secret and to act in the best interests of their clients. In each country, advocates are under legal obligation to report suspicious cases of money-laundering (although in **Ukraine** this obligation is not stated as such; it is provided that the advocate shall not be liable in any way in case of reporting a suspicious case, and that this shall not be considered to be in breach of the professional rules). Without exception, lawyers in each country are requested to pursue a continuous legal education, although the practical modalities of this differ.

Differences and specificities

In **Armenia**, the protection of the advocate's office appears to be of the highest level: there is a general prohibition to seize any carrier of information belonging to the advocate.

[8] Those restrictions concern the powers of local bar association to regulate the number of advocates in particular areas.

As regards the continuous legal education, the number of hours that advocates must complete per year differs widely:

- 24 – in **Armenia**
- 12 – in **Georgia**
- 40 – in **Moldova**
- 10 hours in **Ukraine**.

In **Belarus**, advocates are required to complete a 36-hours course every 5 years. It appears that although in all countries the failure to complete the required amount of legal education may result in the disciplinary sanctions, in practice this is applied only in **Belarus and in Armenia**.

In all countries concerns have been voiced about the letters of advocate's inquiry to various authorities and organisations when such letters remain often unanswered. Only in **Ukraine** there is an administrative liability envisaged for the failure to respond to such a letter of inquiry within a given time.

In **Belarus**, there is a legal prohibition to provide legal services for free, although it appears that this rule is not absolute in practice[9].

In **Moldova**, advocates are legally forbidden from participating in a case without its prior examination. In **Belarus** and **Moldova** advocates have the right to plead that their client is not guilty, even though the client himself pleads guilty.

Assessment

Freedom to exercise legal profession is a key to the efficient functioning of justice. As the present comparative review demonstrated, in all participating countries such freedom is enshrined in the legislation on the bar and/or the relevant procedural and other legislation. The level of these guarantees is different, and the bar associations might wish to study in detail the experiences of each other in connection with various aspects of the legal profession. For instance, in some participating countries advocates voiced concerns that the letters of advocate's inquiry are not always answered. These countries might wish to study relevant provision of the Ukrainian law on the bar according to which it is not only mandatory to answer such letters, but also an administrative liability for failure to answer them is envisaged. As a corollary to the freedom to exercise legal profession, professional obligations of advocates are envisaged in the relevant legislation of all participating countries. Those obligations generally relate to the continuous legal education, the protection of professional secret, the relationship with other advocates and the judiciary, etc. Professional duties of lawyers, which are described more in detail in the relevant parts relating to each country, do not warrant any specific comment at this stage.

Free legal aid

General observations

Free legal aid is available in all participating countries, although in different forms. It generally depends on the financial situation of the beneficiary. It is sometimes related to particular types

[9] This rule does not concern the right of persons to benefit from the state-guaranteed legal aid that is provided at the cost of respective local Bar or state/municipal budget.

of proceedings (usually, employment or family disputes). It might also be tied to certain categories of persons (veterans, disabled people) irrespectively of their financial situation.

Similarities

Free legal aid is available to some extent in all participating countries.

Differences and specificities

There are significant differences among the participating countries. This relates to the eligibility criteria, the management, the rules for the advocates' participation in the system and the assessment of the quality of their services. In **Armenia**, legal aid is provided by the Office of Public Defender, which is a structural unit within the Chamber of Advocates. In **Belarus**, it is managed by local bar associations, with the subsequent reimbursement of the expenses by the state or local authorities. In **Georgia**, free legal aid is managed by an independent Legal Aid Unit. In **Ukraine**, a specialised Coordination Centre for Legal Aid Provision was established within the Ministry of Justice.

Assessment

Under existing European standards, the participation of advocates in free legal aid programmes should be a matter of their free choice. The quality of legal services provided should be of adequate quality. In all participating countries there are systems of free legal aid, and their functioning does not appear to warrant any particular comment.

Professional liability

General observations

Professional liability of lawyers in the participating countries has many common features. Essentially, the particularity of all participating countries is that a situation of malpractice – for instance, the missing of a procedural deadline – may be considered as a professional misconduct and, therefore, might lead to disciplinary proceedings. In none of the participating countries the system of professional insurance is implemented in practice (although certain advocates do have such insurance).

Similarities

The grounds for disciplinary liability are largely similar in all participating countries and relate to the breach of the rules of the advocate's ethics. The procedural rules for the examination of disciplinary cases are also essentially similar. In each country, the law sets out detailed procedural rules relating to the examination of disciplinary cases. Appeals, including judicial appeal, are available against the decisions of the ethics and discipline commissions of the respective bar associations. The adversarial principle during the disciplinary proceedings is common to all legal systems.

Differences and specificities

There are differences as regards the sanctions which might be imposed on lawyers. Warning and disbarment are common to all participating countries. Serious warning (reprimand) may be imposed in **Armenia**, **Belarus** and **Moldova**. Temporary suspension of the right to practice law does exist in **Georgia**, **Moldova** and **Ukraine**. A pecuniary fine is envisaged in the legislation of **Armenia** and **Moldova**. In certain countries (**Armenia**, **Georgia**) judges may impose sanctions directly on lawyers in the course of judicial proceedings. In **Georgia**, custody of up to 30 days can be imposed on lawyers.

Assessment

Professional liability of advocates is an important issue owing to the fact that, in certain circumstances, it might be considered as a tool for punishing them without sufficient grounds. Therefore, a certain number of principles and safeguards have been elaborated on international and European level. Thus, according to § 1 of Principle VI of the Recommendation, “where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings”. It appears that, overall, the relevant legislation of the participating countries is compliant with the European standards in respect of the grounds for professional liability, the conduct of the disciplinary proceedings and the right to appeal against the decisions taken. As regards, however, the principle of proportionality in determining sanctions for disciplinary offences committed by lawyers, it appears that a greater variety of those sanctions in all the participating countries could contribute to a more nuanced approach to each case of professional misconduct. In this context a further research could be done as to the relevance and compliance with the European standards of such a sanction as a pecuniary fine envisaged in Armenia and Moldova. Furthermore, the issue of a professional insurance is of great importance because it allows distinguishing between a professional fault and an ethical misconduct, and, therefore, it protects the interests of advocates and their clients. The bar associations of the participating countries might wish to study this issue further.

COUNTRY DESCRIPTIONS

ARMENIA

Legal framework

The freedom, independence and self-governance of the legal profession are guaranteed at the level of the Constitution[10] (Article 64). The Law on Advocacy ("the Law") prescribes a number of principles and institutional frameworks in order to guarantee those values in practice. The Law was adopted on 14 December 2004[11] and regulates the most important aspects of legal profession, such as guarantees of independence, self-governance, access to legal profession, principles of exercise safeguards of legal profession, principles of free legal aid, and professional liability. In order to guarantee those in practice, the Law establishes the Chamber of Advocates ("the Chamber") as the only professional association of practicing lawyers, thereby replacing several associations of lawyers that had operated in parallel before.

Apart from the Constitution and the Law, the Chamber adopted the Code of Ethics of Advocates[12] and Regulation for Disciplinary Procedure,[13] which have a significant influence on the daily exercise of their profession by lawyers. The Chamber also issued a number of regulations regarding continuous legal education, payment of membership fees etc.

There appears to be consensus that institutionally the Chamber is sufficiently independent of the state. It autonomously decides the general regulation and important aspects of the profession.

The Law states that the legal profession is a form of a right-defending activity aimed at defence of the rights, freedom and interests by all legitimate means. The exercise of the legal profession consists of three main groups of activities: legal advice, legal representation (civil and administrative disputes), as well as defence in criminal cases. Exercise of legal profession is generally a paid activity, but at the choice of the lawyer services may be provided on an unpaid basis. Thus, the legal profession is both right-protecting and commercial activity, and lawyers are free to decide the commercial form in which they organize and exercise their profession.

Fees for legal services are determined on a contractual basis between the lawyer and his or her client. For the purpose of ensuring uniformity of court awards in respect of legal costs, the Chamber has issued a sample average pricelist of typical legal services.[14] This pricelist has been widely used by the courts for determining the legal costs to be awarded along with a judgment.

Advocates are free to choose their organizational form. In practice, many advocates choose the form of "individual entrepreneur", where they act as physical persons and bear personal responsibility for any damage caused by their practice with their personal property. This form of business requires an existing address, but that can be the address of registration of the advocate. Others join in partnerships and establish a limited liability company, rarely a closed joint stock company. These forms also require an existing address, but, again, it can be the address of registration of an advocate, e.g. an apartment. As to taxation, for up to the approximately 100,000 Euro annual revenue, advocates pay around 5% tax of their quarterly revenues under the "turnover tax". In excess of that amount of revenue, the taxation regime changes to value added tax and the rates increase significantly.

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10 Article 64.
11 Entry into force in January 2005.
12 The last version is of 19 October 2019.
13 The last version is of 19 October 2019.
14 Decision of the Council of the Chamber of Advocates dated 26 December 2013.

Monopoly of legal services

It must be noted that under Article 5 of the Law, only lawyers entered into the profession have the right to exercise representation in courts and in criminal defence as a regular and paid activity. Consequently, legal advice as a regular and paid activity may be provided both by lawyers who do not possess licence from the Chamber and by any other person who does not even have a law degree. This rule aims to ensure that, as a rule, only lawyers admitted to legal practice may assume the responsibility of representing individuals in legal disputes. The rationale is that licenced attorneys have the training necessary for legal practice, and they may act under a binding professional ethics enforced through disciplinary procedure, while non-licenced lawyers do not have those professional qualities and responsibilities towards the society and their client. For instance, there are no consequences for a non-lawyer person representing several clients among whom there is an apparent conflict of interest, while such a situation would entail a disciplinary proceeding and, possibly, a disciplinary sanction, for an advocate.

As regards court representation, there are some limitations and uncertainties. According to Article 52(1) of the Code of Civil Procedure, only advocates, including advocates of foreign states authorised to practice in Armenia, may represent individuals before the courts of general jurisdiction.[15] However, the situation is different under the Code of Administrative Procedure. According to Article 22, any person may be authorised by a party to administrative proceedings to represent a private person before the Administrative Court. However, the Administrative Court has the power to remove a non-advocate representative from the proceedings on the grounds that he or she is unable to represent the party.[16] The uncertainty lies in the fact that the majority of procedural actions (in particular production of evidence) may be carried out by the court ex-officio. Thus, representation by the advocates before the Administrative Court becomes not particularly important.

It is noteworthy that in 2015 the courts of general jurisdictions prohibited court representation under civil procedure to persons who were not admitted to legal practice. On the basis of the constitutional complaint by the persons who had been denied the right to represent individuals in civil procedure, the Constitutional Court ruled that Article 5 of the Law is constitutional.[17] It reasoned that individuals who may not afford to hire an advocate have the possibility to apply for free legal aid, if eligibility is satisfied. Moreover, nothing prevents any person to be a court representative, if it is not “regular” or “paid” activity.

By way of exception, a non-advocate may represent a client before a court in civil or administrative cases on a non-regular, unpaid and ad hoc basis. Additionally, legal advice may be provided practically by any person, even by a non-lawyer, which may be controversial from the perspective of ensuring a unified quality of all legal services.

Institutional framework

The Chamber is a statutory non-commercial legal entity under public law, established in 2005 and independent from the state and local self-government organs. The Chamber is the successor of all “lawyers’ associations” that had existed before its establishment. Since it is the only body authorised to license lawyers for practicing law, it may be asserted that it is the only official association of legal professionals in Armenia. There are other, non-governmental

[15] Such limitation does not concern representation by relatives or representation of a company by persons who one at least 20 per cent of its shares.

[16] Article 23.

[17] Constitutional Court decision no. sdv-1263 dated 5 April 2016.

organisations bearing the name “association of lawyers”,[18] but either officially or unofficially they are not connected with the regulation or exercise of the legal profession as such. Moreover, although the Law on Advocacy allows advocates to establish unions, it expressly prohibits establishment of such unions that exercise the functions of the Chamber.

The Chamber consists of the following bodies, which ensure a discharge of its statutory functions:

- general assembly of advocates
- council
- school of advocates
- qualification commission
- chairperson
- office of public defender.

Members of the bodies are not normally remunerated, except for the Chairperson and others prescribed by the Charter of the Chamber. They may practice law in parallel to their membership in these bodies. However, a member of the Chamber can only be elected in one of the bodies of the Chamber.

The General Assembly of Advocates, consisting of all members of the Chamber, adopts the key internal regulations, e.g. the Charter, the Code of Ethics etc., elects and dismisses the Chairperson and members of the Council.

The Council, consisting of at least 12 members, is the executive and disciplinary organ of the Chamber. Its members are elected by the General Assembly for a period of 4 years, on the basis of a rating score. In case a member’s functions are terminated early, another advocate who participated in the elections and had the next higher rating is appointed instead. The Council appoints the Head of the Office of Public Defender; approves of the annual budget upon introduction by the Chairperson; determines the rules of mandatory continuous training and membership fees; files proposals for legislative amendments with public authorities etc.

The Chairperson is elected by the General Assembly of Advocates for a period of 4 years from among the advocates who have at least 10 years of experience as practicing lawyer. The Chairperson is the highest executive official of the Chamber, who represents the Chamber *ex officio;* supervises the functioning of the Office of the Public Defender; launches disciplinary proceedings against an advocate; appoints and dismisses the staff of the Chamber and decides on their functions; governs the Chamber property in accordance with the Charter etc. The Chairperson is the head of the Chamber’s Council *ex officio*.

As of 14 October 2019, there were 2081 lawyers admitted to legal practice in Armenia, out of which 43 per cent are female.

During the fact-finding missions to Armenia, the international consultant had meetings with the presidents of young lawyers' association, and also the president of the Armenian lawyers' association. The president of the young lawyers’ association of Armenia is a young woman. No gender issues were raised during all of those meetings. All these organisations are registered NGOs and implement various grant-based projects typical of NGOs, such as free legal advice to vulnerable groups, monitoring, training, research and reporting etc.

[18] See for instance, Armenian Lawyer’s Associations ().

It also emerged that the head of the Office of the Public Defender of Armenia is a woman. A new Deputy has recently been appointed, who is also a young woman. Women advocates are also involved in the Council of the Chamber of Advocates of Armenia. Thus, women in Armenia are actively involved in the management of the bar associations, while almost half of all advocates of Armenia are women.

Access to legal profession

The conditions and requirements for the entry to the legal profession in Armenia can be divided into two periods: 2005-2011 and 2012 to present. During the first period, for the entry to the legal profession it was sufficient to have a first law degree (LL.B. or equivalent), to pay a registration fee, and to pass an examination. The examination consisted of a written multiple-choice test, followed by an interview. The system lacked credibility in terms of being able to check if the applicant in fact has the skills and knowledge of necessary for practicing law. In particular, it was doubtful that a mere multiple-choice test and oral interview were effective tools for verifying the analytical and critical thinking skills of the applicants.

In 2010-2011 there were discussions on establishment of an academy of justice, which would provide trainings for future advocates, investigators, prosecutors and judges under the same umbrella. After wide discussions within the Chamber and among the members of the legal profession, it was agreed that future practicing lawyers should not be trained under the same auspices as judges, prosecutors and investigators, for reasons of independence and impartiality. Thus, in 2012 amendments were made to the Law and the new School of Advocates ("the School") was established. Since 2012, in order to be qualified for the practice of law, it is necessary to graduate from the School of Advocates by taking the final qualification examination.

In order to be admitted to the School of Advocates, it is required to have a full legal capacity, a law degree, and not to have a criminal conviction. The training consists of practical sessions led by practitioners and a practice period under the supervision of an experienced attorney. The School of Advocates has its Charter, which stipulates a possibility of disciplinary proceedings against the candidates studying at the School of Advocates.

Foreign advocates may practice law in Armenia on the basis of a law licence provided by a foreign bar association. However, the practice may start only after authorisation of the Council of Advocates. A foreign lawyer, if authorised to practice law in Armenia, pays certain fees and must follow the Code of Ethics of the Chamber.

The Law does not require that an advocate have a "physical" office in order to practice law. On the contrary, establishment of an office and a choice of its organizational form[19] are at the discretion of the advocate.

Apparently, the current system of entry to the legal profession is more effective in terms of ensuring quality of legal services provided by lawyers who were granted the licence. Therefore, the system of entry to the legal profession complies with European standards concerning ensuring quality of services provided by lawyers.

[19] In practice, many advocates choose the form of "individual entrepreneur", where they act as physical persons and bear personal responsibility for any damage caused by their practice with their personal property. This form of business requires an existing address, but that can be the address of registration of the advocate. Others join in partnerships and establish a limited liability company, rarely a closed joint stock company. These forms also require an existing address, but, again, it can be the address of registration of an advocate, e.g. an apartment. As to taxation, for up to the approximately 100,000 Euro annual revenue, advocates pay around 5% tax of their quarterly revenues under the "turnover tax". In excess of that amount of revenue, the taxation regime changes to value added tax and the rates increase significantly.

Freedom of exercise of the legal profession

For the purpose of the effective exercise of the legal profession, and due to the peculiarities of the profession, the attorneys who are admitted to practice enjoy a special status, which entails certain powers, privileges, safeguards and protection. For the same purposes, they also bear a number of professional duties.

Advocates have the power of making binding enquiries and requests for clarifications/information to state, local self-government institutions, as well as business entities in respect of their cases.[20] Those institutions are obliged to provide the requested information or documents within ten days. In criminal and administrative law disputes this power of practicing lawyers aims at "equalising" the procedural opportunities of the private party with the prosecution/public authority, while in private law disputes attorneys of both parties enjoy the same procedural opportunities.

The advocate, his/her family and their property are under protection of the state. The offices, houses, cars and other premises belonging to advocates are inviolable, and cannot be searched in connection with circumstances related to the exercise of his or her profession by a lawyer.

It is particularly noteworthy that a lawyer may not be searched on any grounds during the exercise of his or her professional activities. In this connection, it was controversial that in 2017 practicing lawyers were required by judicial bailiffs[21] to open or empty their bags before entry to court premises for representation/defence of their clients.[22] Advocates, journalists and human rights groups raised the following questions: whether the requirement to open/empty lawyer's bag at the entrance of a court amounts to a search or a mere security control,[23] whether the principle of equality of arms was breached, when prosecutors were not searched/controlled at court entrance, while advocates were searched/controlled with a view to finding dangerous or prohibited objects, and whether that practice was compatible with the principle of inviolability of confidential information related to clients/case.

This practice was modified and then abandoned after official statements of the Chamber,[24] the Human Rights Defender[25] and the Judicial Department[26] in respect of ensuring security at the entry to courts. In particular, the Council of the Chamber expressed a position, according to which security control of both advocates and public authorities, without discrimination, entering court premises was acceptable, provided that there were reasonable suspicions about existence of prohibited objects and that in practice it did not amount to a search, which was unacceptable in respect of advocates. In addition, in order to ensure legal certainty and safeguards against abuses, it was necessary to clarify the procedure of security control, as well as to publish a list of prohibited objects. On the other hand, the Judicial Department undertook to ensure an equal treatment of advocates and prosecutors during the security control, ensure that the security control was conducted by modern equipment, ensure certainty of control procedure, avoid any instance of search of an advocate, and provide respect to the profession of lawyer.

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20 Article 18, Law on Advocates.

21 According to Article 213 of the Judicial Code, the protection of the court premises and the rights of person inside those premises rests on the service of judicial bailiff, which operates under the Judicial Department of Armenia.

22 https://www.azatutyun.am/a/28593161.html (news report in Armenian language showing that advocates refused to show the contents of their bags to judicial bailiffs arguing that that kind of control would amount to search prohibited within the meaning of Article 21(6) of the Law).

23 www.civilnet.am/news/2017/08/11/Ձննո՞ւմ-թե՞-խուզարկում-փաստաբանները-համակարծիք-չեն/319608.

24 See the decision of the Council no. 15-L dated 21 July 2017 [available only in Armenian at http://advocates.am/images/khorhrdi_voroshumner/2017/Voroshum_xorh_15-znnutyun-21.07.2017-verjn.pdf].

25 https://ombuds.am/images/files/58416236aa023802cbe6b1d7cc383811.pdf.

26 https://hetq.am/hy/article/81530.

Duties

Advocates are under duty (and enjoy the privilege against disclosure) of confidentiality of information that they obtained or were provided with in connection with their cases. This duty extends to staff members of a law firm established by an advocate. By exception from this rule, the advocate discloses confidential information in connection with a well-known preparation of a serious or exceptionally serious criminal offence.[27] In addition, in a number of real or perceived conflict of interest situations, an advocate must refuse to assume the representation or defence of a client or shall terminate his or her service after becoming aware of such conflict.[28]

The Law imposes on the Chamber a general obligation of supervision over advocates' compliance with their obligations under legislation on combating money laundering and terrorism financing. The Law imposes an obligation to comply with the same legislation on individual advocates, if such compliance does not contradict their obligation to preserve professional secrets.[29] The Law also confers on advocates a right to report suspicions concerning money laundering/terrorism financing, if such disclosure would not be in breach of the professional secrecy, i.e. obtained in the exercise of their profession. However, the latter safeguard is inapplicable and lawyer may report such suspicions in any event, if the client intends to obtain or obtained legal advice for the purpose of money laundering/terrorism financing.

According to the Law, lawyer admitted to practice has to pay membership fees and participate in continuous professional training after being admitted to practice, in accordance with the amount and schedule determined by the Chamber.

According to the Chamber's regulations on fees,[30] a mandatory fee of five thousand Armenian dram[31] to be paid by each attorney consists of membership fee and fee for continuous education, which may be paid on monthly or annual basis. However, there are exceptions and reductions for certain categories advocates. For instance, advocates over the age of 70 and those having first grade disability are totally exempted from payment of membership fee, while persons permanently leaving outside the capital or those leaving and practicing in remote areas pay less than the half of the membership fee. In addition, there are a number of other mandatory fees within the Chamber, e.g. entry fees, fees for assistant to advocate etc. Failure by an advocate to pay membership fees is a ground for institution of disciplinary proceedings against him/her.

In accordance with the Chamber's regulations on continuous professional education,[32] in the period of 1 January to 31 December each year, an advocate is obliged to participate in 24 hours[33] of training offered by the Chamber. For better planning and organisation, the advocate is required to take 12 hours between 1 January and 30 June, while the rest of the 12 hours between 1 July and 31 December. During a two-year period, the advocate is required to take at least 4 hours of training concerning professional ethics, i.e. deontology training. The Chamber has concluded agreements with a number of external training provides to the effect that their training qualifies as continuous professional training required for an advocate, if the latter prefers that training. Advocates who are also university lecturers are exempted from those 24 hours of professional training for the required period, provided that they teach a law course during two academic semesters. Finally, similar to membership fees, failure to satisfy

[27] Article 25(4), Law on Advocates.
[28] Article 21, Law on Advocates.
[29] Article 19(7), Law on Advocates.
[30] Decision of the Council of the Chamber no. 3/8-L dated 5 February 2014.
[31] Approximately nine Euros monthly.
[32] Decision of the Council of the Chamber no. 4/11-L dated 22 February 2019.
[33] 40 minutes of training amounts to an academic hour for the purposes of continuous professional training of advocates.

the requirement of continuous professional training may result in institution of disciplinary proceedings against an advocate.

During the fact-finding mission in Yerevan, some interlocutors raised concerns about preparation and selection of the continuous professional training. In practice, the needs assessment among the advocates for developing those courses is conducted on a regular base, through the surveys among the advocates. The list of topics is updated twice a year and published on the website of the Chamber. The advocates vote for the topics from the list or suggest additional topics.
The Law encourages advocates to provide legal service pro bono, but does not contain any obligation to do so.

There is currently no functioning scheme of voluntary or mandatory professional insurance for advocates in Armenia, but there are debates and discussions about its establishment.

There does not appear to be any major reform regarding the legal profession currently pending before public authorities or those envisaged for the near future.

Free legal aid

Free legal assistance is guaranteed at the level of the Constitution (Article 64), while the institutional setup and functioning of the system are guaranteed by the Law and implemented by the Office of the Public Defender (OPD), which is institutionally a part of the Chamber. In cases prescribed by the Law, free legal assistance is provided at the expense of the state funds.

Eligibility

Article 41 of the Law is the main legal provision on free legal aid. It contains an exhaustive list of legal services available under legal aid and eligibility criteria for access to free legal assistance. There are several ways in which individuals may access free legal assistance under that provision. Individuals become eligible for free legal aid, if:

- they show their belonging to one of the categories of vulnerable persons exhaustively listed in Article 41 of the Law, irrespective of his or her financial situation. The list of eligible persons under Article 41 include refugees and asylum-seekers, victims of domestic violence, trafficking, and torture, persons with certain grade of disability, persons confined in psychiatric institutions for treatment of mental disorders[34] etc.
- they have demonstrated to the OPD that they do not have “sufficient funds” or
- on the basis of the decision of the body conducting criminal procedure (investigator, prosecutor, judge presiding over a criminal case) assigning free legal assistance to a person charged with a criminal offence on the grounds of indigence or interests of justice.

While free legal assistance on the basis of potential vulnerability due to belonging to certain group is welcome and encouraged, the eligibility system is not built around the indigence of recipients of free legal aid. A person may actually belong to a vulnerable group (victim of domestic violence or torture, certain grade of disability etc.), but in the meantime have sufficient funds to hire a lawyer for legal assistance. Belonging to a vulnerable group is not an indicator

[34] As regards the right of access to free legal aid by persons with mental illnesses (the list of vulnerable persons under Article 41 or the Law), it must be noted that often persons suffering from mental illnesses need legal assistance *before* they are placed in a psychiatric hospital. Actually, if they had access to high quality legal representation from the beginning of court procedure, where their compulsory treatment is being determined, they may even not need further assistance, because a court may refuse to place the person under compulsory treatment on the basis of skilled legal representation.

of indigence, and, therefore, scarce public funds may be spend for ensuring free legal assistance to persons who are able to take care of their legal issues themselves.

As regards the proof by applicants of their indigence to the OPD, there is no any state-wide system containing credible information about the economic situation of the person to which the OPD would have access for decision-making. In practice, in case of doubt, the OPD sends inquires about the applicant's economic situation to various public institutions. The law does not define the meaning of "insufficient funds" for the purposes of eligibility for legal aid.

As to the access to free legal aid on the basis of the decision of an investigator, prosecutor or a judge, the same issue of a lack of check on the financial situation of the accused/defendant remains here too. The Code of Criminal Procedure states that the body conducting the criminal procedure decides that the accused/defendant must be provided free legal aid, and refers its decision to the OPD. The latter is bound to provide free legal aid without first being able or obliged to check the indigence of the accused/defendant.

Irrespective of how the individual was granted free legal aid, in case there are court fees to be paid in case of loss of the case, the fees are nevertheless payable by the beneficiary of the free legal aid. It appears somewhat counterintuitive that a person who benefits from free legal aid on the ground of indigence may have the means to pay the court fees.

Institutional framework

The OPD currently consists of the Head of the Office, a deputy, 55 public defenders, and support staff. The Council of the Chamber determines the number of public defenders on the basis of finances received from the Government. The Head of the OPD is appointed for 4 years by the Council upon the proposal of the Chairperson of the Chamber. The Head of the OPD must have 10 years of experience as advocate to be eligible for appointment. In addition to other functions, the Head of the OPD may request that public authorities provide information necessary for making a decision concerning eligibility of free legal assistance under Article 41 or the Law. Public defender is the advocate who works in the OPD on the basis of labour contract.

There was a major reform of the OPD in 2015, including a widespread awareness campaign about the OPD and access to justice. As a result, the Government increased the financing of the OPD with five PDs, since it was clear that awareness resulted in more applications to the OPD. It is noteworthy that since 2015 the OPD has been operating the "Electronic Public Defender" (EPD) programme, which contains all data about all free legal aid cases. This database is a management, decision-making and quality-assurance tool. Each public defender manages his or her own case in the EPD program by uploading his or her legal documents in the system, which is reviewed by the OPD. The EPD program allows for approval of free legal aid applications by the OPD filed from remote areas. Each year each public defender is evaluated for the January-October period. The evaluation consists of score-based system, where the public defender receives a predetermined score for necessary legal actions in a specific case. The OPD does not extend contracts with te public defenders who have the lowest 25% scores within the reported period of 10 months. The accuracy of information provided by the public defenders and his or her scores are checked annually by the Monitoring Commission of the Chamber.

Budget and salaries of the Office of the Public Defender

On the basis of data on the requested and the actually provided free legal aid, at the proposal of the OPD, the Head the Council of the Chamber submits to the Government a budget proposal for the OPD. In case the Government has objections in respect of the proposal, it transfers the proposal to the National Assembly and to the Chamber with justifications of the objections. The Chamber's Chairperson manages the financial resources of the OPD. The

budget includes the fees of the officials and public defenders of the OPD, as well as expenses necessary for normal functioning of the OPD.

Under the Law, in order to ensure equality of social benefits and conditions of employment, the salary of public defenders and deputies of the OPD Head shall be equal to the salary of the public prosecutor of Yerevan.[35] In addition, the OPD Head is also entitled to remuneration for his or her functions as the OPD Head, in the amount of 25% of the salary of public defender. An amount equal to 30% of the total salaries of public defenders, the OPD Head and his or her deputies may be used towards "other expenses" that are necessary for ensuring the normal functioning of the OPD, irrespective of the actual work performed by public defenders.

However, while prosecutors are also entitled to additions to their salaries, such as rewards or extra-workload pay, the Law does not allow for similar pays in similar situations to the public defenders, thereby creating unequal conditions for a similar work. Currently filling of this legal gap is not on the agenda of policy-makers.

In order to save and use the existing resources more efficiently, the OPD employs public defenders on the basis of 0.5 or 0.25 working time, especially in the regions. This technique allows the OPD to employ up to four public defenders with a resource for one. This may be the most effective solution in a situation where there is only one public defender in a remote area, while there are several defendants in a criminal case requiring free legal defence and there is a conflict between them, which would imply that one public defender cannot represent all. Employing several public defenders at the cost of one allows for various solutions.

The institutional setup and functioning of the OPD is compliant with European standards. However, the Law does not provide for an efficient system of determination of the beneficiaries of the free legal aid, because the system is not based on the principle of the indigence of beneficiaries, but on their belonging to certain social categories of vulnerable groups. In order to make the free legal aid system dependent on indigence, it is necessary to amend Article 41 of the Law, as well as to have an accurate and efficient way of determining the economic situation of an individual, e.g. the fiscal number of each individual enabling the OPD and the body conducting the criminal procedure to make an appropriate decision on the provision of the legal aid.

Professional liability of lawyers

The professional liability of lawyers is one of the most significant aspects of the legal profession in Armenia, often appearing on local media pages. Existence of a well-functioning system of professional liability is the requirement of the principle of "self-governance" and "autonomy" of the legal profession: freedom of exercise of the profession without state intervention requires an effective professional liability system in place. For this reason, the Chamber adopted the Code of Ethics (the Code) for the members of the Chamber, as well as the Rules of Disciplinary Procedure (the Rules).

The Code includes such disciplinary offences as disclosure of professional secrets; existence of conflict of interest between the lawyer and his or her client, or between the clients; insulting other lawyers, public officials, judges and others.

[35] According to the Law on the Salaries of Public Servants, the starting monthly gross salary of a prosecutor in Yerevan city is approximately 1,000 Euro, which may increase depending on various factors, such as education, languages, experience etc.

Discipline

The disciplinary procedure against an advocate may be initiated by the following instruments, in case the information furnished discloses *prima facie* the breach of the Law or the Code by an advocate:

- complaints filed by public authorities/officials, individuals, as well as media publications
- a motion of a presiding judge to impose a disciplinary sanction on an advocate representing a client in his or her case
- a failure of an advocate to pay the membership fees in accordance with the Chamber's regulations
- a failure of an advocate to participate in continuous professional training in accordance with the Chamber's regulations.

The disciplinary procedure is opened by the Chairperson of the Chamber. The rapporteurs prepare evidence-based recommendations and the Council of the Chamber examines and makes a final decision on disciplinary issues. Though some interlocutors raised concerns on the manner of initiation and examination of disciplinary proceedings, the available statistics of the initiated/cancelled proceedings confirms the efficiency of the existing disciplinary procedure.

As a rule, the disciplinary proceedings are held in public. However, in case of a risk of disclosure of confidential information protected under the attorney-client privilege, the proceedings are held *in camera*. In the latter case, the final decision is also protected from publicity, except for the dispositive part demonstrating only the outcome of the disciplinary procedure.[36]

In case of a refusal to initiate a disciplinary procedure in respect of an advocate, the "interested party" may challenge the lawfulness of such refusal before the courts.[37]

The Law provides for a wide range of sanctions that may be imposed on advocates as a result of disciplinary proceedings:

- warning
- serious warning
- participation in additional training sessions
- fine[38]
- termination of the advocate's licence to practice law.

The sanction must be proportionate to the seriousness of the disciplinary offence. It is noteworthy that a judgment against the advocate's client is not in itself sufficient for institution of disciplinary procedure.

A decision on imposing a disciplinary sanction on an advocate may be challenged before a first-instance court of general jurisdiction within a month from the date of notice. The judgment of the first instance may be further challenged through the system of judicial appeals. Such disputes are examined through civil procedure.

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[36] Rules of Disciplinary Procedure, Rule 1.7.
[37] Article 39.4(3), Law on Advocates.
[38] The amount of the fine cannot exceed approximately 380 Euro.

There is no mandatory professional insurance for advocates. However, the Code of Ethics "encourages" that advocates ensure their professional activity, if it is possible, and inform their clients about the risks of not doing so.[39]

Remedies

Lawyers subjected to any form of disciplinary sanction have the right to challenge the decision of the Council before the courts. According to judicial practice, the lawyers initiate civil proceedings against the Chamber in order to dispute the disciplinary sanctions imposed on them. There is no publicly available explanation why these cases are considered to be of the civil law nature. Such an explanation would be necessary, since (1) the disputes between the lawyer and the Chamber do not belong to the employment or contractual disputes, but appear rather of a public law nature (i.e. right to exercise the profession freely), and (2) the administrative procedure appears more appropriate, considering that it is designed for disputes involving public interest.

Judicial sanctions

Previously, judges lacked the power to directly impose a sanction on an advocate. They had to file an application with the Chamber seeking disciplinary sanction. After a few judicial applications were denied by the Chamber of Advocates,[40] the law developed so that to allow judges to sanction lawyers directly. Judicial authorities were of the view that once they established the fact of a breach of ethics in the courtroom, it would be sufficient for a judge to impose a sanction on a lawyer, rather than request such measures from the Chamber. Otherwise, according to the judiciary, if the judge established a breach by a lawyer, but would not have power to impose a sanction, and the Chamber would refuse to discipline such a lawyer, it would make an impression that the Chamber might consider the judge's decision on the sanction inappropriate.

Judicial sanctions include: (1) a warning; (2) removal from the courtroom; (3) a fine. These sanctions may be imposed on any person present in the courtroom. However, removal from courtroom does not apply to lawyers who represent or defend their clients in that particular case. A fine is up to around 180 Euro. The judicial decision on imposing a sanction is final and cannot be appealed, which may raise issues as regards the lack of access to an effective remedy.

[39] Rule 3.10.

[40] Back in 2008-2009, some advocates exercised a practice of demonstratively leaving the courtroom without the permission of the presiding judge, while the court was still in session. In some cases judges unsuccessfully attempted to discipline the lawyers for such behaviour through the Chamber. In specific cases the Chamber held that generally leaving the courtroom was not welcome behaviour, but, if that is the only way of protesting against the alleged unlawful actions of the judge, this should be tolerated. It can be presumed that, along with other factors, this contributed to developing the law in a way that judges have direct powers of sanctioning lawyers (as well as anyone in the courtroom), for inappropriate behaviour.

BELARUS

Legal framework

The rights of legal assistance, representation in courts and guarantees of free legal aid are insured by the Constitution (Article 62). The most important legal act regulating the set-up and functioning of the legal profession in Belarus is the Law "On Advocacy and Legal Practice" dated 19 December 2011. The Law is divided into 8 chapters. Each chapter addresses the most essential aspects of the legal profession including the access to legal profession, the organisation of the profession, the professional liability of advocates and the self-governance of the bar.

Under the Law, the bar is intended to provide professional legal aid and, thereby, to assist persons in protecting their rights and freedoms.

In addition to the Law, several other legislative enactments regulate the functioning of lawyers in Belarus[41].

The legal framework includes also local legal acts of the Republican Bar - the methodical recommendations or guidelines. There are about 20 major recommendations which include requirements as to the individual advocates and advocates' bureaus, the implementation of which is monitored by the Republican Bar.

In parallel with the professional advocates, who provide "legal assistance", general legal services (save for court representation) may be provided by the so-called "licensees", or lawyers practicing on the basis of a special licence, issued by the Ministry of Justice but not admitted to the bar[42]. The Law specifically provides rules of co-operation between the state (in the person of the Ministry of Justice) and the bar. The Law provides that the advocates shall be independent during the exercise of their functions. It also specifies that the legal profession is not an entrepreneurial activity.

Under the Law the state shall guarantee to all lawyers a possibility to exercise freely their profession. The state shall also facilitate co-operation between the legal profession and the state agencies.

The Law specifically provides that it does not regulate the provision of legal assistance by other law professionals (legal counsels of companies or state agencies, public notaries, investment agents, the lawyers of the chamber of commerce, auditors, association of the protection of consumers' rights, the holders of special licences).

The Ministry of Justice has a number of responsibilities with regard to the bar. In particular, the Ministry of Justice shall register all local bar associations, determine (in cooperation with the Republican bar association) the minimum number of lawyers in the "legal consultations" in each region, enact (in cooperation with bar associations) the Rules of professional ethics of advocates (hereafter "Rules of professional ethics"), determine the procedure of the lawyers' appraisals ("attestation"), approve the candidates for the positions of the heads of the "legal consultations" and local bar associations, perform the control over the activity of lawyers, etc.

During the fact-finding mission to Belarus the role of the state in the functioning of the bar was discussed with representatives of the bar associations and the Ministry of Justice. It appears

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[41] Among them: Decrees of the President, Resolutions of the Council of Ministers and of the Ministry of Justice.

[42] This practice is expected to be cancelled in the near future as a result of amendments initiated by the relevant Presidential Decree.

that the seemingly significant powers of the Ministry of Justice over the regulation of the bar associations are not rigorously enforced in practice. Furthermore, in practice certain of those powers are delegated to the bar associations (such as, for example, the conducting of appraisals). It also emerged that within the Ministry of Justice there are only 2 persons responsible for dealing with the bar associations, which appears to demonstrate that the state is not over-involved in the functioning of the bar. It also emerged from the discussions that there might be a progressive disengagement of the state from the functioning of the bar associations. This appears to be in full compliance with the recent presidential enactments stressing the necessity for the state to remain focused only on the most essential public functions.

Also, the representatives of the Ministry of Justice stressed that they perceive their role not as a form of a control over the lawyers but rather as guarantors of the legal assistance to citizens. Another issue of concern for the Ministry of Justice appears to be the quality of legal assistance provided by lawyers.

The Republican Bar still adheres to the policy of gradual/evolutionary and complete disaffiliation from the Ministry of Justice.

According to the statistics of Belarusian Republican Bar Association there are 2115 advocates as of January 2020.

Currently, there appear to be no major reforms in preparation or implementation with regard to the legal profession in Belarus.

Institutional framework

In Belarus the advocates can exercise their profession in three forms:

- Individually
- via a bureau, or
- through “legal consultation”.

According to the Law, only lawyers having a professional experience of not less than 3 years can be registered as individual advocates. The same rule applies to the lawyers who wish to become founders or partners of the advocates’ bureau. Under the Belarus law, any advocate who wishes to exercise the legal profession individually must have a dedicated office. It is noteworthy that this requirement is not a formal one. During the fact-finding mission the consultant was able to confirm that the respective representatives of the bar associations conduct on-site inspections with a view to ascertaining that a lawyer is practicing in suitable conditions.

A bureau is a non-commercial association established specifically to provide legal assistance. Such a bureau has the right to enter into employment agreements with advocates, paralegals (advocates’ assistants) or any other persons. The bureau as a form of exercise of the profession was established in 2012. Two or more advocates can be partners of a bureau. The Law provides rules for the internal functioning of the bureau, in particular with regard to the partners’ general assembly, its competence and the voting rights.

“Legal consultation” is a specific form of the lawyers’ activity. It may be created by a local bar association with a view to provide legal assistance and ensure its accessibility. “Legal consultation” is not a legal entity. A local bar association provides full financial and organisational assistance to “legal consultation”. Also, the local bar association is in charge of recruiting staff for their “legal consultation”. The Head of the “legal consultation”, in addition to his or her legal activity, ensures certain managerial and control functions over the lawyers

working in the consultation. He or she is appointed by a council of the local bar association. It appears that a majority of Belarus advocates exercise their activity by means of “legal consultations”.

“Legal consultations” and bureaus can specialize in particular areas of law.

The Republican Bar adheres to the policy of enlargement of the network of advocates and bringing of all qualified and professional individual lawyers under the flagship of the bar and strengthening of advocates’ monopoly.

The self-governing bodies of advocates in Belarus include:

- the assembly of the advocates, and
- the bar associations.

The bar associations are represented by the Republican bar association and the local bar associations (7 in total, out of which 6 are regional bar associations associated with the existing *oblasts*, and 1 Minsk bar association).

A local bar association is a non-commercial association of lawyers. The membership in the local bar association for all lawyers residing in the respective region is mandatory. Lawyers who occupy certain functions in the local bar association can continue to exercise their profession. They receive a primary income from the exercise of their profession, while some remuneration is envisaged for the days of their activity in the local bar associations.

Local bar associations shall transmit, within 5 working days, any decision relating to their functioning or disciplinary liability of the lawyers to the Ministry of Justice.

In Belarus local bar associations are charged with the organisation of free legal aid. They are also responsible for the compliance by all lawyers with the Rules of professional ethics. In addition, they operate a de-facto control over the number of new lawyers wishing to exercise their profession individually or in the form of a bureau. More generally, local bar associations are intended to ensure the normal functioning of the bar at the regional level.

There are two managerial bodies of a local bar association:

- the General assembly (conference) of all lawyers of the local bar association, and
- the Council of the local bar association, which acts as its executive body.

The Council of the local bar is a collegial body whose members are elected by the General assembly for a period of 4 years. The meetings of the General assembly are held at the request of the Council or of 1/3 of all the lawyers, but not less than once a year.

The powers of the General assembly are quite large and relate to the most essential aspects of the functioning of the local bar, including the determination of the lawyers’ financial contribution, the election of the Head of the local bar association and of his or her deputy, the election of members of the auditing and disciplinary commissions of the local bar association, and other functions.

The Head of the local bar association represents the association in relations with the state authorities, other associations and individuals. He or she acts without any specific powers of the attorney in the interests of the association. He or she convenes the Council of the local bar association no less than one time per month.

The powers of the Council of the local bar association include, *inter alia*, the setting-up of new "legal consultations" and the admission of new lawyers to the local bar association. The Council approves (or disapproves) the decisions of lawyers to exercise their functions individually or in the form of a bureau. The Council also examines petitions of individuals relating to the alleged instances of breach by lawyers of their professional rules.

During the fact-finding mission the author raised the above issue with several persons. It emerged from the discussions that the possibility offered to the local bar associations to de-facto control the admission of new lawyers was necessary because of the particular circumstances in Belarus. Specifically, this allowed to avoid the overconcentration of lawyers in economically attractive areas to the detriment of less attractive regions and the rural areas and to ensure the access to lawyers of all citizens.

An auditing commission is created within the local bar association with a view to controlling its financial activity. There are at least three advocates elected as members of the auditing commission. The term of their duty is 4 years. The auditing commission shall report its activity results before the General assembly (conference) of the local bar association.

A disciplinary commission of the local bar association has a dual role. Firstly, it is empowered to examine the disciplinary cases against lawyers of the local bar association. Secondly, it shall oversee the observance by lawyers of the Rules of professional ethics[43] and, more generally, of the legislation on the bar. The members of the disciplinary commission shall be elected by the General assembly (conference) of all lawyers of the local bar association for a duration of 4 years. The General assembly also elects the Head of the disciplinary commission for the duration of 4 years.

The Republican bar association of Belarus is a non-commercial association of the local bar associations. It is intended to represent all lawyers of Belarus in their relations with the state and any other entities. It is governed by a Council. Each local bar association shall elect 2 representatives to the Council of the Republican bar association for the duration of 4 years. The Head of the Republican bar association and his or her deputy shall be elected by the members of the Council for the duration of 4 years, upon approval by the Ministry of Justice. The Council has large powers in relation to the functioning of the legal profession.

An auditing and a disciplinary commission are created within the Republican bar association. The role of the auditing commission is similar to the one within a local bar association. The disciplinary commission is composed by one representative of each local bar association. It is empowered to examine disciplinary cases against the Head of the local bar associations and their deputies and the appeals against the decisions to institute disciplinary proceedings against lawyers.

The highest body of the advocates' self-governance is the Assembly of lawyers. It shall be convened by the Head of the Republican bar association at the request of at least 1/3 of the members of local bar associations. Representatives of the local bar associations participate in the Assembly. The number of these representatives shall be determined by Council of the Republican bar association taking into account the need for a proportional representation of all lawyers (but not less than 30 lawyers from each local bar association). The Assembly shall decide on the most important issues relating to the functioning of the legal profession, including the improvement of the quality of legal assistance and the reform of the profession.

[43] As one of the instruments of enforcement practices, the commission publishes regularly consolidated resumes on advocates who allowed violations, which is seen as a preventive measure.

In addition to the above institutional associations of lawyers there are certain other professional associations of lawyers having specific interests.

The Council of Young Lawyers of the Belarusian Republican bar association is dedicated to the promotion of the interests of young lawyers. It was created in February 2018. It has representations within each local bar association. Any lawyer aged below 35 can be a member. The Council of Young Lawyers is also organising trainings for lawyers at the school of young lawyers. Pro bono activities, sport and cultural events are also within the tasks of this Council. It also contributes to awareness-raising on professional ethics. One of the recent activities of the Council is the creation of a museum of lawyers. The Council is considered as a staff reserve for the Republican Bar, prepared for future management of the bar and the disciplinary commission.

It was revealed during the discussions with representatives of the Council that no special favourable tax regime or any other incentives for young lawyer exist in Belarus.

The Association of Woman Lawyers was created in 1998 and has its office in Brest. Its activity is focused on the protection of the rights of women-lawyers, the promotion of legal education and volunteering activities.

It appears that neither the Republican nor local bar associations have any formal cooperation agreement with the relevant bar associations in foreign countries.

Access to legal profession

Under the Law, any individual who is a citizen of Belarus and who obtained higher legal education and at least a three-year experience in the field of law, completed (in certain cases) a traineeship, passed a qualification examination, obtained a special authorisation (licence) and has become a member of a local bar association is eligible to be an advocate.

The foreign lawyers can exercise in Belarus under certain conditions. Firstly, there should be an international agreement between Belarus and the country of origin of the lawyer who wishes to practice in Belarus. Secondly, they should undergo a special procedure (file an application and pass an interview where the knowledge of the language and the law is tested) in order to be included into a special register. It appears that at present only lawyers from Lithuania and the Russian Federation can exercise in Belarus.

No person can be an advocate if he or she:

- was found partially or fully incapable
- committed earlier a premeditated offense
- was disbarred from practicing law or dismissed from law-enforcement bodies, during a period of 3 years from such disbarment or dismissal.

In addition, a former entrepreneur whose licence or special authorisation has been revoked less than one year prior to his or her application for an advocate's licence cannot be an advocate. Also, the Law provides that if the person has applied for the admission to the qualification examination, but subsequently worked on certain public positions, he or she cannot become an advocate.

A traineeship is mandatory before taking a qualification exam (with some exceptions). A traineeship lasts between 3 and 6 months and is supervised by a lawyer practicing individually or within "legal consultation" or a bureau.

A local bar association shall approve the traineeship before its commencement. It is noteworthy that the Ministry of Justice is empowered to make binding proposals to local bar associations as to the number of trainees who shall be directed to the "legal consultations" in a given region. One advocate cannot supervise more than one trainee at a time. A fixed-term payable employment agreement is concluded between the trainee and the local bar association (if the traineeship is provided by the "legal consultation"), depending on the region, where the trainee started the traineeship. If the traineeship is provided by a bureau or an individual advocate, an employment agreement is concluded with them. The trainee is bound by a professional secrecy.

At the end of the traineeship the advocate-supervisor shall draft an assessment as to the readiness of the trainee to be a lawyer. The trainee also drafts a report about the results of his or her traineeship. It should be observed that if the former trainee fails to successfully pass the qualification exam, the Council of the local bar association can decide that his or her former supervisor shall not supervise trainees for a period of up to 2 years.

After the successful completion of the traineeship the incumbent candidate can take the qualification exam. The Law provides the areas of law in relation with which the exam shall be taken. The qualification exam is conducted in writing and orally.

Prior to starting their practice lawyers need to obtain a licence from the Ministry of Justice, be admitted to a local bar association and take the oath of the advocate.

The Qualification Commission has large powers in connection with the access to the legal profession. It conducts the qualification exam, makes the necessary assessments as to the readiness of the incumbent candidates to take it, conducts an assessment of the advocates every 5 years or in certain cases at any time[44] etc.

The Qualification Commission is composed of:

- The Head of the Republican bar association and 1 representative of each local bar association
- 1 representative of the Supreme Court, the General Prosecutor Office and other state agencies
- 5 representatives of the Ministry of Justice
- 2 representatives of the academic institutions.

The Head of the Qualification Commission is the Deputy Minister of Justice.

The Register of the advocates is held by the Ministry of Justice.

Freedom of exercise of the legal profession

Article 16 §1 of the Law provides that advocates shall be independent and abide only to law.

The Law further provides several guaranties of practice of law. Any interference with practice of law is prohibited. It is also prohibited to demand disclosure of data constituting professional secret from an advocate, his or her trainees or an assistant. In any case, such information cannot be used as evidence in the framework of criminal proceedings. Furthermore, the advocate, his or her trainee or assistant cannot be heard as witnesses in connection with events covered by the professional secret. The Law specifically provides that it shall be

[44] The qualification commission can delegate this power to the local bar association.

forbidden to impede with the advocate's right to have confidential meetings with his or her client or to limit their duration or frequency.

The Law does not contain any specific provisions regarding the institution of criminal proceedings against a lawyer. Neither the Law provides for any specific procedure for a search in the lawyer's office.

The Law sets out a number of situations which prohibit to the lawyer the possibility to deal with the case (such as the previous work on the case of a client whose interest are contrary to the interest of the new client, or the previous involvement in the case in the capacity of a judge).

It is noteworthy that the Law provides that a lawyer cannot act contrary to a client's interest, with one specific exception. If in a criminal case the client pleads guilty but the lawyer is of opinion that this runs contrary to the client's interests, the lawyer can disagree with the client's position and ask the court to declare his client not guilty.

In Belarus, the advocate has the right to provide any type of legal assistance to his or her clients. The advocate has the right to submit inquiries, to represent client in courts, to draft motions and applications, to use technical means, etc.

It emerged from the discussions during the fact-finding mission that one of the issues of concern for lawyers in Belarus was the practical difficulty to obtain information from the authorities or private companies. The consultant was explained that also the Law provides for a possibility for a lawyer to address a letter of inquiry to any person or state authority, in practice such a letter is not always answered. Moreover, there is no sanction of any kind in case of failure to provide the necessary reply.

The lawyers in Belarus are required to conclude an agreement for the provision of legal assistance with their clients. It is noteworthy that the Law specifically forbids the provision of legal assistance for free. However, the advocates' fees are determined freely without any regulation from the state.

The advocates are required to perform their duties in the highest professional level and in accordance with the Rules of professional ethics.

An advocate's assistant can be employed under a labour agreement by an advocate, a local bar association (for the employment in the "legal consultations") or a bureau. The Law provides that the advocate's assistant shall perform auxiliary legal functions and shall support the lawyer's work. The advocate's assistant can be present during court hearings and certain procedural acts. He or she shall be the guardian of the professional secret. A person that has a non-expunged or outstanding conviction or is partially of fully incapacitated cannot be an advocate's assistant.

Advocates are also required to improve their professional skills. The system of continuous legal education is centred around the Institute of Advanced Studies which is a structural element of the Belarus State University. The Institute was created in 1999. It conducts mandatory and voluntary continuous legal trainings. Each advocate shall attend a 1-week training on various areas of law every 5 years. There are generally groups of 50 to 100 lawyers present during the training week. After each training week an oral interview is conducted with lawyers. Rules of professional ethics are always included into the training programmes. In recent years the Institute has introduced courses on modern issues such as alternative dispute resolution or economic law. The Institute runs also specialised trainings for the heads of the local bar associations.

During the fact-finding mission and the meeting with the representatives of the Institute it was stressed that the trainings provided by the Institute should not be considered as the only training to be provided to advocates. Instead, in the opinion of the representatives of the Institute, each advocate should improve his or her skills continuously through individual education and the participation in various training programmes provided outside the Institute.

It is noteworthy that under the Law lawyers shall have the obligation to contribute to the legal education of citizens. During the fact-finding mission to Belarus it emerged that several lawyers actively participate in various events aimed at legal education of citizens, often at the most vulnerable ones.

It also emerged that the legal prohibition to provide *pro bono* legal assistance is not fully compliant with the current societal needs. However, it appears that this legal provision does not prevent lawyers to provide some amount of *pro bono* work, under certain conditions and in cooperation with the local bar associations.

In Belarus lawyers have an obligation to report suspicious transactions in connection with money laundering, funding of terrorism and dissemination of weapons of mass destruction.

Each lawyer in Belarus has the right to a holiday of at least 24 days. This also applies to lawyers who practice individually. Those lawyers shall, however, inform the local bar association about the expected start and duration of his or her holiday 15 days before the start of the holiday.

Free Legal Aid

The Law provides that in certain cases legal aid will be provided at the expense of the local bar associations, the local and state budget.

The legal assistance is provided for free at the expense of the local bar associations:

- to claimants in the first-instance courts in employment disputes and disputes relating to the aliments claims, and
- oral consultations to the veterans of the World War II concerning the issues unrelated to the commercial activity
- in connection with claims for pensions and social payments
- to persons with handicap of I and II category – but only concerning oral consultations which do not require the examination of documents
- to minors, or their parents (legal representatives) acting in the interests of the minors
- in other cases, upon a decision of the local bar association.

This list of beneficiaries of legal assistance is continually enlarging.

The legal aid is provided at the expense of the state budget to persons who are the victims of human trafficking or terrorism.

In criminal cases, the legal aid is provided to suspects or the accused at the expense of the local budget. The local bar associations manage the procedure of legal aid provision.

Occasional campaigns on provision of legal assistance are initiated by local bar associations, the Ministry of Justice, and various professional unions (e.g. the union of people with disabilities) for specific groups of people (e.g. for people with disabilities, elder people, people with low income etc.)

Some interlocutors stated that a lack of clear definition for the “people with low-income” might lead to difficulties while determining the true beneficiaries of legal aid. It might be desirable that the advocates should determine individually who should be provided with the free legal aid.

During the fact-finding mission to Belarus, there were discussions about the need to further improve the existing system of free legal aid which does not take fully into account the financial situation of the persons but is rather attached to certain types of proceedings. It appears that a joint project with the United Nations agency UNDP relating to the free legal aid is implemented in Belarus.

Professional liability of lawyers

In Belarus the professional liability of lawyers is a consequence of the violation of their Rules of professional ethics or of the malpractice which is essentially assimilated to the ethics. Significantly, there is no system of professional insurance of legal practice. As a result, in case of the malpractice, the advocates may be subjected to disciplinary proceedings.

Chapter 3 of the Law provides the legal framework for disciplinary liability of lawyers.

The Law provides that the grounds for discipline of advocates shall be the commission of acts contrary to the Law, the Rules of professional ethics, other legislative enactments in connection with the bar, the charters of the local bar associations and advocates’ bureau, the resolutions of the Republican and local bar associations.

Any complaint about the alleged misconduct shall be lodged with the local bar association of which the advocate is a member. If the complaint is against the Head or members of the Council of the Republican bar association and the heads or members of the Council of the local bar associations, it shall be lodged with the Republican bar association.

After the examination of the complaint two types of decisions can be taken: to declare the complaint unsubstantiated or to institute the disciplinary proceedings.

There are three types of disciplinary sanctions:

- a warning
- a severe warning
- disbarment from the local bar association.

The Law provides specific procedural rules of disciplinary proceedings. Thus, the disciplinary proceedings can be instituted by a General assembly (conference) of the local bar association, the Council of the bar association, the Head (or his deputy) of the bar association or the Minister of Justice on their own motion or on the basis of a complaint.

Before the disciplinary proceedings are initiated, a preliminary assessment of the alleged facts shall be conducted. To that end, the lawyer and any other persons are requested to provide their statements in writing.

If the disciplinary proceedings are instituted by the Minister of Justice, a special order is issued, in which the grounds for the proceedings as well as the time-limits for the examination of the case by the disciplinary commission of the bar association are indicated. The order, together with all the relevant documents, is sent to the disciplinary commission of the bar association. The Minister of Justice has the right to revoke his order at any time before the decision on the case is adopted.

As a result of the examination of the case, the disciplinary commission of a local bar association can adopt one of the following decisions:

- to impose a disciplinary sanction
- to discontinue the disciplinary proceedings.

The disciplinary sanction shall be imposed not later than one month from the date when the lawyer's misconduct is discovered. In addition, the statutory time-limit for the institution of the disciplinary proceedings is 6 months, with some exceptions.

The Law provides that if the lawyer does not commit a new misconduct during one year from the date when a disciplinary sanction is applied, it shall be considered that this disciplinary sanction is annulled. Exceptionally, a disciplinary sanction can be revoked by a decision of the disciplinary commission of the local bar association, and upon agreement of the person or authority which initiated the case, but not earlier than after 6 months from the date when the disciplinary sanction was imposed.

The grounds for the disbarment of a lawyer from the local bar association are different from those for the disciplinary liability. The lawyer shall be disbarred when his or her licence is annulled, and in certain other cases (for instance: failure to practice law for a period of 1 year; commission of acts incompatible with the profession of lawyers whose list is provided in the Rules of professional ethics; impossibility to perform its duties owing to the lack of the necessary skills, which is confirmed by a decision of the Qualification Commission; the loss of the Belarus citizenship; the criminal conviction of the lawyer; the failure to pay the fees for the membership in the local bar association; the refusal to provide free legal aid etc.).

The decision of the disciplinary commission of a local bar association adopted after the examination of the disciplinary case may be appealed during one month after its adoption to the disciplinary commission of the Republican bar association. The decision of the Republican bar association can be appealed during one month from the date of its adoption to a court.

The Republican bar association summarizes on a regular basis the statistics of the disciplinary proceedings in each region. Regular overviews of those proceedings are published and circulated to the local bar associations. The overviews provide the number of the disciplinary proceedings in each region, their type and the summary of the most significant cases. It appears that those overviews provide lawyers with useful information about the practice of each regional bar association in connection with the disciplinary cases. This enables lawyers to be aware of the situations of misconduct that might lead to the disciplinary proceedings, and, therefore, to avoid the commission of such acts of misconduct.

During the fact-finding mission to Belarus it was demonstrated that the number of lawyers on whom the disciplinary sanctions are imposed every year is relatively small. In 2018, a total of 366 complaints against lawyers have been lodged. It resulted in 15 warnings, 8 severe warnings and 4 disbarment of lawyers.

GEORGIA

Legal framework

The freedom of exercise and the right to self-organization of the legal profession is guaranteed by the Constitution of Georgia[45]. The following statutes and regulations govern the legal profession[46]:

- Law on Advocates
- Law on Legal Aid
- Charter of the Georgian Bar Association
- Code of Ethics of Advocates
- Regulation on Disciplinary Proceedings.

It appears that currently there are no major reforms of the legal profession pending before the Parliament and the Government. It became apparent during meetings with policy-makers and the judiciary, that there was an expectation that any initiative of a major reform of the legal profession should arise from the community of lawyers itself. It shall be mentioned that several legislative amendments were initiated and implemented by the GBA, including in such areas as procedural safeguards for lawyers on the Constitutional level, introduction of a Professional Adaptation Programme, procedural issues related to disciplinary proceedings. Now a new package of amendments is prepared by the GBA on the mandatory license for representation in first-instance courts on civil cases, broadening of the competencies of lawyers' interns, a special income-tax regime for individual lawyers, prohibition of unlicensed legal practice.

Monopoly on legal services

There is a partial monopoly on practicing law in Georgia. Legal advice and court representation in first-instance courts under civil and administrative procedures, as well as before the Constitutional Court, may be provided by any person, even by those who do not have a law degree. Defence in criminal cases, as well as court representation in all appellate and cassation instances are the only legal services that may be provided exclusively by advocates of the Georgian Bar Association (GBA).

During meetings with various actors for the purposes of this comparative review, it was generally acknowledged that issues of ethics and quality of legal service might arise if the legal service is provided by non-lawyers. However, it was also noted by state and non-state actors that those concerns are counterbalanced by the need to ensure a broader access to court by allowing non-lawyers to represent individuals in the first-instance courts. The rationale for this exception is mostly economical: attorney fees may be high and hinder access to justice, while the non-advocates do not normally charge expensive fees.

Institutional framework

The Law on Advocates was adopted in 2001, but the establishment of the GBA was completed only in 2004. The main bodies that ensure the functioning of the GBA include:

- the General Assembly of GBA members
- the Chairperson
- the Executive Council
- the Ethics Commission
- the Audit Commission.

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[45] Article 31.

[46] Many of the updates to those statutes have not been available in English. Therefore, some inconsistencies with the current legislation are possible.

The GBA is a legal entity under public law, based on membership. Membership in the GBA is mandatory for all advocates. Today the GBA hosts around 5,000 members – lawyers admitted to law practice.

The General Assembly of the GBA is the highest decision-making body of the GBA and an expression of professional self-governance. It elects and dismisses the Chairperson, the members of the Executive Council, Ethics Commission of the GBA etc. It also adopts and amends the internal regulatory acts, such as the Code of Ethics and regulation on disciplinary proceedings.

The Executive Council of the GBA consist of 12 persons, 11 are elected by the General Assembly for a period of 4 years, while the Chairperson is an *ex officio* member of the Council. The Executive Council approves the budget and the estimate of the next budget; decides the topics of mandatory continuous education for advocates; approves the procedure of functioning of the Training Centre of the GBA etc.

The Chairperson of the GBA is elected by the General Assembly for a period of 4 years, upon his or her consent. The Chairperson's post is reimbursed from the GBA funds, and imposes an obligation not to practice during the period of office.

The Audit Commission, consisting of 5 lawyers, is elected by the General Assembly of the GBA for a period of 4 years. Its main task is to oversee the observance of the law, the Charter and internal legal acts by the organs of the GBA, e.g. the Chairperson, the Executive Council etc.

There are several opportunities for cooperation and exchange of ideas between lawyers and public authorities. In particular, there are parallel working groups on reforms of civil procedure and criminal procedure, where representatives of public authorities and the GBA members work together towards amendment of procedural legislation.

In Georgia there is a number of lawyers NGOs, such as "Georgian Lawyers for Independent Profession", "Union of Law Firms of Georgia", "Independent Union of Georgian Lawyers", "Young Lawyers", "Association of Law Firms of Georgia"[47]. These NGOs provide discussion and education platforms for Georgian lawyers and the wider public on the issues related to the function of the legal profession.

During the fact-finding missions to Georgia, the international consultant had a meeting with the chairperson of Georgian Young Lawyers' Association. This organisation is a registered NGO and it implements various grant-based projects typical of NGOs, such as free legal advice to vulnerable groups, monitoring, training, research and reporting etc.

Access to legal profession

For entry to the legal profession in Georgia, the candidate must possess a law degree and pass a bar examination, which is a written test. After passing the bar examination, the candidate may also qualify for being appointed as public prosecutor. As regards the law degree, a degree in law (Bachelor, Masters, or above) is required in order to be admitted to the bar examination. Candidates may choose to take either a general bar examination, consisting of law questions from all major areas of law or a specialized bar examination with civil[48] or criminal specializations. Candidates passing the general bar examination may practice in all areas of law, while candidates passing the specialized bar examination may only

[47] www.alfg.ge/about?lang=en

[48] Under Article 11 of the Law on Advocates, civil law specialization also includes administrative law, even though the two are significantly different.

practice in the respective specialization. Both groups of advocates are allowed to practice constitutional law. The written test consists of a number of multiple-choice analytical questions. It appears that with time the test became rather complex and the rate of failure among the candidates is quite high.

In 2019 a new "adaptation program" was introduced as an additional requirement for entry into the legal profession. The adaptation program lasts approximately 12 months and it starts after the candidate passes the bar examination and before he/she becomes a member of the GBA. The advocate may practice law only after successfully completing the adaption program, which consists of a theoretical training for three months and an apprenticeship under the supervision of an experienced lawyer for nine months. The completion of the adaptation program is certified by a letter of the supervisor. The idea behind the introduction of the adaptation program was that even when a candidate passes the complex bar examination, he or she still needs a special professional training and practical experience necessary for the independent practice of law in order to remedy the gap in legal education provided by academic law schools. The idea is justified and welcome, but the procedure and mechanism of adaptation could be further improved and clarified. The overall effectiveness of the adaptation program, especially the standards of supervision and successful completion, has yet to be tested and developed further.

Moreover, the adaptation requirement was challenged by various candidates as being unfair and ineffective in the sense that it does not distinguish the experienced and already practiced lawyers from the new graduates who lack any legal experience.[49] They argue that the adaptation requirement should be more flexible and individualised, since some lawyers have already accumulated significant practical experience and already studied the courses offered during adaptation during their bachelor studies.

There is no requirement to have a physical office space in order to practice law in Georgia. The Law on Advocates states that an advocate has the right to establish his or her bureau, in which case the bureau is registered with the Executive Council of the GBA[50]. However, advocates may practice law without being obliged to establish an office.

Freedom of exercise of the legal profession

Lawyers and their clients determine their legal relationships, fees and services under the law of contracts. As a result, the advocates' fees are regulated neither by statute nor by any regulatory act issued by the GBA. As regards the recompense of legal costs by judgments, whether or not a party to proceedings presents a contract/invoice to the court demonstrating the legal costs, courts may reduce those costs if they appear unreasonable.

The advocate is under state protection. Interrogation of an advocate as a witness in relation to one of his or her cases is prohibited. The confidentiality of communication between an advocate and his or her client is privileged – any interception of communication between an advocate and his or her client is prohibited. Any information obtained by an advocate from his or her client is confidential and protected. An advocate has the right to seek and receive documents, information or other factual data practically from anyone, which is necessary for the protection of clients' interests. Confidentiality of personal meetings and communication with a client is guaranteed by law. However, the Law does not expressly prohibit search in an advocate's premises (house, office, car), and there appears to be a lack of procedural safeguards ensuring that the attorney-client privilege will not be violated during the search.

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[49] During the two-day fact-finding mission to Georgia on 28-29 November 2019, the case was still pending before the Constitutional Court.

[50] Article 18, Law on Advocates.

Members of the GBA have the right and are under life-time duty of preserving professional secrets. A breach of this duty may result in disciplinary proceedings. They are also required to be aware of situations of the conflict of interest between themselves and their clients, as well as between their clients. Advocates have to ensure that they are not engaged in such situations under the threat of disciplinary proceedings.

All members of the GBA are obliged to pay membership fees, which is approximately 60 Euro annually. Failure to make that contribution may result in disciplinary proceedings. They are also required to participate in the mandatory continuous training delivered by the GBA, which consists of 12 hours of training annually.

During the fact-finding mission to Tbilisi on 28-29 November 2019, there were discussions about the new controversial obligation imposed on lawyers by the Law on Advocates to report cases of suspicion on money laundering and terrorism financing. This obligation appears controversial, since it may conflict one of the core principles of the legal profession, i.e. the privileged status of the information exchanged between the lawyer and his or her client. It also does not appear that the new provisions are supplied with the safeguards against possible abuses by public authorities[51].

The practice of law and the engagement in the public service are incompatible, which means that a person holding a public office may not practice law.

Free legal aid

Public legal aid

The system of free legal aid in Georgia has public and private components. Institutionally, the provision of free legal aid financed from public means rests with the Legal Aid Service (LAS).[52] The LAS is an independent entity under public law, similar to the GBA, but it is institutionally separate from it. The LAS has consultancy centres and legal aid bureaus throughout Georgia, and more centres and bureaus are envisaged to be established in the future, especially in remote areas in order to facilitate access to justice. The LAS is under the overall supervision of the Parliament of Georgia. It submits annual report of activities and expenditure to the Parliament for approval. The Parliament may also remove the LAS director by a resolution.

A collegiate executive organ is established within the LAS - the Legal Aid Council, in order to ensure administration, normal functioning and independence and transparency of the LAS. The Legal Aid Council is composed of nine members appointed as follows: three members by the Executive Council of the GBA; three members by the Public Defender; a member is appointed by the lawyers of the Legal Aid Bureaus; a member is appointed by the Minister of Justice from among the servants of the Ministry of Justice; and a member is appointed by the High Council of Justice from among the non-judge members of the Council. The service is not remunerated and lasts for 4 years, except for the member appointed by the Legal Aid Bureau, whose term is one year. Under the Law on Legal Aid, the Legal Aid Council has a crucial decision-making and standard-setting role within the LAS and for the legal aid in general.

In order to provide free legal aid services, the LAS employs advocates from the GBA under employment contracts (public servant contracts). Salaries of the advocates providing free legal aid are comparable to public prosecutors.

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[51] The information received during the discussions needs to be clarified and checked once the last version of the Law on Advocates is translated into English.

[52] Law on Legal Aid.

The LAS provides all types of the free legal aid services, i.e. legal advice, court representation, defence etc. Oral legal advice at the consultancy centres are provided to everyone, irrespective of the social group or the economic situation. However, the support in drafting legal documents, court representation and defence in criminal cases is provided only to the persons who meet certain criteria. Firstly, individuals may request free legal aid by reference to their indigent status. The LAS has a direct access to the applicants' financial situation through the point-based system operated by the Government. If the data available in that system reveal that the individual is indigent for the purposes of free legal aid, LAS grants the application and provides the requested legal service. Secondly, certain individuals belonging to vulnerable groups are also eligible for free legal aid - such as asylum-seekers, certain categories of persons with disabilities, victims of domestic violence. Persons belonging to these groups are eligible for free legal aid irrespective of their economic situation. However, free legal aid may be provided only in relation to the legal issues relevant for the vulnerable group in question. In cases when an applicant with a certain category of disability seeks free legal aid in relation to a corporate dispute, the request will be rejected on the grounds that the dispute does not relate to his or her disability.

There is a quality assurance system within the LAS, which enables the LAS to ensure the quality of free legal aid without interference with the independent and autonomous decision-making by the lawyer and the client. According to the system, after an initial consultation with the client, the free legal aid provider designs a strategy or an action plan necessary for the particular case, and introduces it both to the client and the LAS. Any future changes to the initial action-plan are to be notified to the client and the LAS. It is for the LAS at the end to assess whether or not the suggested action-plan was justified.

Private legal aid

As regards the private component of free legal aid in Georgia, the GBA extends pro-bono activities on the project basis (e.g. pro-bono days, free legal aid for persons with disabilities). Many human rights NGOs, law associations, university law school clinics and individual advocates are involved in the provision of pro-bono or grant-funded free legal services to vulnerable groups and individuals. Organisations like the Georgian Young Lawyers' Association of have their units throughout the country and provide free legal assistance to vulnerable groups and individuals. Other organisations include: Legal Aid Centre, Transparency International, Tbilisi Free University, Human Rights Centre and many others. Most of them operate on the basis of grants, and employ members of the GBA on a contractual basis for ensuring court representation.

Professional liability of lawyers

Professional ethics and discipline

Disciplinary matters of the GBA members are determined in accordance with the Law on Advocates and the Code of Ethics adopted by the General Assembly of Advocates.

In order to ensure compliance with the Code of Ethics, the Charter of the GBA established the Ethics Commission[53]. The independence of the Ethics Commission is guaranteed by the Law on Advocates[54], as well as by the manner in which its composition is determined. The Ethics Commission consists of 15 members elected by a secret ballot by the General Assembly of the GBA for a term of four years. 12 shall be members of the GBA, while three members are elected are not from the GBA: they must be persons with at least 30 years of age, have five

[53] Article 21, GBA Charter.
[54] Article 28(4), Law on Advocates.

years of professional experience, strong reputation in the society and represent prominent specialist in their field of expertise.

Disciplinary proceedings are held in camera, but the decision of the Ethics Commission is pronounced publicly and remains accessible for a certain period of time.[55] The timeframe within which the disciplinary decision of the Ethics Commission remains publicly assessable depends on the type of sanction imposed: the more severe the sanction, the longer the decision imposing it remains accessible. There is an acknowledgement that such a measure may raise issues with the reputation and, therefore, the right to private life of the advocate who was subjected to disciplinary measure. However, there is a belief that the public interest of temporary publicity of disciplinary decisions may outweigh the private interests of the advocate concerned.

The disciplinary sanctions that the Ethics Commission may impose on the advocate who committed a disciplinary offense are as follows:

- warning
- temporary suspension of the right to practice from six months to three years, and
- disbarment.

Applications against an advocate are examined by a panel of the Ethics Commission consisting of 3 members. The panel decides the matter by a vote of simple majority. However, in case the Commission aims to impose the strictest sanction, i.e. disbarment, a panel consisting of at least 10 members of the Commission shall examine the application. In that case at least 8 votes are required for disbarment[56]. There is a general five-year time-limit for imposing disciplinary liability on an advocate, starting from the moment of commission. It is interesting that in case the Ethics Commission refused an application on institution of disciplinary proceedings in respect of an advocate, the person who lodged the application does not have a judicial remedy against such refusal.

In addition, the Law on Advocates distinguishes disciplinary sanctions from disciplinary measures, and prescribes two measures that may be imposed on an advocate in breach of the Code of Ethics:

- a personal letter of reprimand
- termination of the advocate's membership in the bodies of the GBA, e.g. the Executive Council, the Ethics Commission etc.

As a result of the meeting with various stakeholders, it became evident that there was a need to diversify the disciplinary sanctions/measures imposed on the advocate for breach of professional ethics.

Remedies

A decision imposing a disciplinary sanction on an advocate may be appealed before the Supreme Court of Georgia within one-month time-limit[57]. The Disciplinary Chamber of the Supreme Court examines the case. It is noteworthy that the same Chamber also examines the disciplinary cases against judges and there is no special disciplinary procedure for such cases. As a consequence, the Disciplinary Chamber applies the Code of Administrative Procedure by analogy. It was noted, however, that introduction of a special disciplinary procedure would improve the examination of disciplinary cases involving the advocates.

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[55] Article 35(3), Law on Advocates, Article 3, Regulation on Disciplinary Proceedings against Lawyers.
[56] Article 24.4, Charter of the GBA.
[57] Article 35(6), Law on Advocates.

Judicial sanctions

It must be noted that judges also play an important part in the system of liability of advocates. Judges may request that the GBA impose a disciplinary sanction on an advocate, who allegedly breached the Code of Ethics. However, a judge may also impose a judicial sanction on an advocate. Such sanctions include: a fine, a removal from hearing, and a custody for up to 30 days. During the meetings of the consultant with judicial authorities, it was stressed that the latter sanction has rarely been imposed. An advocate may appeal against the sanction of custody before the higher instance court. In case such a sanction is imposed by the Supreme Court, the advocate may appeal against it to the Chairperson of the Administrative Chamber of the Supreme Court.

Advocates employed by the LAS are also subject to the same ethical and disciplinary rules of the GBA, because all of them are members of the GBA.

Even though the Law on Advocates provides for professional insurance for advocates, in practice the mechanisms for such insurance are not established and, as a result, there is no functioning system of professional insurance for advocates.

MOLDOVA

Legal framework

In December 2019 the Moldovan bar included 1995 lawyers with the right to practice law[58].

The guarantees of legal defence in Moldova are provided by the Constitution (Article 26). The main legal enactment relating to the profession of advocate in Moldova is the Law "On the Bar" dated 19 July 2002 (hereafter – the "Law"). Other important acts include:

- the Statute of the Legal Profession (approved by the Congress of the Union of Lawyers on 29 Jan. 2011, effective as of 08 Apr. 2011)
- the Regulation on the Organization and Functioning of the Union of Lawyers of the Republic of Moldova (approved by the Union of Lawyers Council on 27 May 2016)
- the Code of Ethics (Deontology) of Lawyers (approved by the Congress of Lawyers on 20 Dec. 2002).

The legislation cited above represents only major enactments relating to the practice of legal profession. There are also a number of laws and subordinate legislation referring to specific issues of lawyers' activities, including the rules on civil and criminal procedure, regulations on sitting the examinations to get access to the profession, specific issues referring to the provision of legal aid, etc.

According to the information provided by the official web-site of the Moldovan Parliament there are currently three concurrent draft laws registered in Parliament. They refer to incompatibilities with legal profession (the draft laws propose enlargement of the list of activities compatible with practicing the legal profession) and access to the legal profession.

However, the current status of these draft laws is unclear. The latest parliamentary debates with respect to them took place in 2017. There is no information on whether any of the proposed amendments are expected to be actually passed by Parliament.

In Moldova, a general legal monopoly on representation of clients before domestic courts is subject to certain exceptions. In civil proceedings, as a general rule, only lawyers (members of the bar) and trainee lawyers (officially registered with the respective bar as trainees) can represent clients (art. 75-(1) of the Civil Procedure Code). Exceptions to this rule are as follows:

- natural persons can also be represented in civil cases by their spouse, parents, children, brothers/sisters, grandparents, grandchildren, if they have higher legal education and have been authorized to represent the respective person in court by a notarized power of attorney (art. 75-(11) of the Civil Procedure Code)
- legal entities in civil cases can be represented by their administrative bodies and employees (art. 75-(2) of the Civil Procedure Code). The latter have to provide the court with the documents confirming their position within the legal entity.

In criminal cases defence can only be ensured by a licenced lawyer.

Representation of victims, civil claimants/respondents in criminal cases can be carried out by lawyers and other persons duly authorized through a power of attorney. Legal entities that

[58] The official information is held by the Ministry of Justice, and since December 2019, 3508 licenses of lawyers have been issued. Of these, 1995 are lawyers with the right to practice and 1047 lawyers have suspended their activity, 192 lawyers are without the form of organization and 274 lawyers discontinued.

participate in criminal cases as civil claimant/respondent can be represented by their heads/directors (art. 79 of the Criminal Procedure Code).

Institutional framework

There are two legal forms for carrying out professional activities of lawyers:

- lawyer's cabinet (individual law office) and
- associated lawyers' bureau.

After getting a bar licence a lawyer automatically becomes a member of the Moldovan Union of Lawyers (Moldovan national bar association). It is mandatory for lawyers to be members of the bar and to hold a bar licence if they want to represent clients in courts.

However, many other activities that are usually practiced by lawyers (providing legal advice, preparing legal documents and assisting clients in certain transactions, representing clients under administrative procedures before public authorities, obtaining and submitting certain documents from/to public bodies, etc.) can be and are frequently performed by persons who are not lawyers and/or are not members of the bar.

There's a national bar association (Union of Lawyers of the Republic of Moldova) and 4 regional bars (Chisinau, Balti, Cahul, and Comrat) that operate within the circumscription of the respective courts of appeal.
During the fact-finding mission to Moldova certain interlocutors indicated to the consultant that the setting-up of four regional bar associations was unnecessary and useless given the relatively small size of the country. The Union of Lawyers is the main self-government association of lawyers in Moldova.

The main governing bodies of the Union are presented below.

- ✓ **Congress** – the highest governing body

It is comprised of delegates from each regional bar association according to the representation quotas. Normally it is convened annually by the Council of the Union of Lawyers. The required quorum is 2/3 of the Congress's members. The decisions are taken by a majority of the members present.

The exclusive competence of the Congress covers the following issues:

- election of the President of the Union of Lawyers and members of the Commission for Ethics and Discipline
- approval of the proposals on the improvement of legislation
- approval of the Code of Ethics of Lawyers
- approval of the yearly budget of the Union and the reports on its implementation
- approval of the bar membership fees
- approval of the fees for the admission to the training examination and qualification examination, as well as for the fees for undergoing the bar training
- approval of yearly reports on the activity of the Council of the Union, Secretary General and Union's Commissions
- approval of the decisions regarding the relations between bar associations
- approval of other decisions referred to the Congress.

It appears that the efficient functioning of the Congress is the issue of concern for some of the lawyers, in particular because of the repetitive situations of the lack of the required quorum.

- ✓ **Council of the Union of Lawyers** – a representative and deliberative body of the Union

The members of the Council are: the President of the Union of Lawyers, deans of the bar associations, lawyers delegated to the Council according to the quota established for each of the bar associations. Delegates are elected at general meetings of each of the bar associations. The term of office of the Council's members is 4 years. Regular meetings of the Council are convened once per month. The decisions are taken by a majority of its members.

The remit of the Council comprises the following issues:

- ensuring the implementation of the decisions taken by the Congress
- decisions on issues relating to the exercise of the legal profession between the sessions of the Congress (except for the issues that constitute the exclusive remit of the Congress)
- ensuring lawyers' access to the state secret
- administering the list of lawyers who hold the right to exercise the legal profession
- taking decisions with respect to professional training of lawyers (including continuous training), initial training programme for trainee lawyers, and institutions that can provide professional training services
- developing recommendations on the relations between bar associations
- ensuring uniformity in examining the issues relating to the admission to professional training and qualification examinations
- registering professional training contracts
- settling conflicts and disputes regarding the undergoing of the professional training
- approving and making public best practices for lawyers and quality assurance mechanisms for legal assistance services
- approving uniform samples of lawyer's stamps and letterheads
- appointing members of the National Council for Legal Aid Guaranteed by State
- preparing yearly activity report and referring them for the approval by the Congress
- approving contracts signed by the Secretary General of the Union of Lawyers with the value exceeding MDL 50,000
- approving the staff list of the secretariat
- exercising other functions provided by law or delegated by the Congress.

- ✓ **President of the Union of Lawyers**

The president is elected for a period of 2 years from members of the Union of Lawyers with at least 5 years of professional experience. President can once be re-elected for another term. The remit of the President covers:

- representing the Union of Lawyers in relations with natural persons and legal entities in Moldova and abroad
- signing the documents issued by the Council of the Union
- supervising the relations between the Council and bar associations, and between the bar associations themselves
- assisting the bar associations in their relations with central and local public authorities
- supervising whether the relevant conditions for lawyers to carry out their activities in courts, criminal investigation bodies and public authorities are ensured.

- ✓ **Secretary General of the Union of Lawyers**

The Secretary General ensures organisational, administrative, economic and financial activities of the Union of Lawyers. He/she is hired by the Council of the Union for 5 years following a competition. The Secretary General can be re-appointed for one more term. The

minimum condition for the appointment is holding a degree in economics or in law and having previous professional experience of at least 5 years.

The functions of the Secretary General are as follows:

- being responsible for the economic and financial activity of the Union
- signing contracts on behalf of the Union
- implementing the Union's budget
- developing the yearly budget of the Union and presenting it for approval to the Congress
- presenting the report on the implementation of the Union's budget
- attending (without voting rights) the sessions of the Congress and meetings of the Council
- preparing (upon consultations with the Council) the agenda and the relevant materials for the Congress and the Council
- taking decisions on recruiting the staff of the secretariat and managing their work
- administering the real and other property of the Union
- exercising other tasks assigned to him/her by the Congress or the Council.

✓ **Bar associations**

Regional bars are established each of the districts of the courts of appeal. All lawyers of the respective district become members of that bar association. The highest governing body of a regional bar is the general meeting of lawyers of the respective district. The current activities are administered by the deans of the bars who are elected by the general meeting of the respective bar for the 2-years term (can be once re-elected for another term).

The bar associations get notifications on the registration of law offices within their districts before the respective documents for those offices are submitted to the Ministry of Justice. The bar associations elect delegates to the yearly Congress of lawyers and also delegate members to the Council of the Union of Lawyers, the Commission on Ethics and Discipline, and the Commission of Censors.

The bar associations participate in developing continuous training programmes for licenced lawyers and initial training programmes for trainee lawyers, supervise the completion of the respective training programmes. They are also expected to supervise the trainee lawyers and their supervisors on their being compliant with the training contract methodology. The regional bars also participate in settling disputes between lawyers. The Law provides that the setting-up of bar associations outside the Union of Lawyers shall be prohibited.

✓ **Specialised commissions**

The **Licencing Commission** is a special Commission consisting of 11 members appointed on the basis of a competition (8 members being lawyers who have previous professional experience of at least 5 years and 3 members – permanent professors of law). The Licencing Commission deals with organising the qualification examinations and examinations for the admission to training for trainee lawyers.

The **Commission on Ethics and Discipline** consists of 11 lawyers (6 are elected by the Congress and 5 are delegated by bars). The Commission examines the complaints against lawyers and trainee lawyers, investigates the respective cases, launches and conducts disciplinary proceedings against lawyers.

The **Commission of Censors** consists of 5 lawyers (appointed by the regional bars). The task of the Commission is to control economic and financial activities of the Union of Lawyers.

The **Secretariat** is a supporting body of the Union of Lawyers.

There is no specialised committee responsible for international cooperation on behalf of the Union. The representative functions are exercised by the President of the Union. There are no special representations of the national bar association abroad.

There are two associations operating within the Union of Lawyers: Young Lawyers Association and Association of Female Lawyers.

The Young Lawyers Association (YLA) has about 30 members[59] and aims at the promotion of the rights of young lawyers. Since its creation in March 2012 the YLA is actively involved in elaboration of practical guides for trainee lawyers, participation in training activities (organised by the Moldovan bar and the Lawyers Training Centre), and development of international relations with young lawyers in Europe. The YLA members find that there is no sufficient institutional communication between the governing bodies of the Bar and the YLA. It appears that the associations' members promote, along with other initiatives some form of permanent presence of young lawyers within the bodies of the Union of Lawyers.

The Association of Female Lawyers was founded in 2015. One of the main goals of the Association is to eliminate discrimination against women lawyers and young lawyers, to promote participation of women lawyers in decision-making bodies of the Moldovan legal profession in line with the principle of gender equality. The Association has a record of organisation of national forums, workshops and trainings on the role of women lawyers, as well as of elaboration of related analytical documents. The Association of Female Lawyers is a member of the European Women Lawyers Association. During the meeting with the representatives of the association in Chisinau it emerged that the situation of female lawyers in Moldova warrants special attention. It appears that there are 365 women lawyers with the right to practice law[60], thus the proportion of female lawyers is around 18.3 %. It also appears that women are underrepresented in the bodies of the advocates' self-government.

Access to legal profession

Under the Law, the following requirements have to be met for becoming a lawyer in Moldova:

1. To hold a Moldovan citizenship
2. To not be under guardianship established by court
3. To hold a 'licentiate' degree in law (similar to bachelor's degree) or an equivalent degree
4. To have an impeccable reputation. The person is deemed not having impeccable reputation, if he/she:

- has been previously convicted for serious, most serious and extremely serious crime
- has any unexpired criminal records
- has been previously expelled from legal profession and disbarred because of compromising reasons
- has been previously dismissed from law enforcement agencies on compromising grounds or was discharged from the position of a judge, notary, legal advisor, or public official on the same grounds
- if his/her activity or behaviour is incompatible with the provisions of the Code of Ethics of Lawyers

[59] Data provided by Moldovan bar.

[60] According to the Moldovan bar, at the moment there are 668 women lawyers with the right to practice, out of which 303 of them have suspended activity.

- if he/she has violated someone's basic human rights and freedoms and that fact has been confirmed by a court of law.

5. To pass a qualification examination (bar exam)[61].

The access to legal practice in Moldova is divided into two stages.

Firstly, the incumbent candidate shall pass an exam authorizing the traineeship before the Licencing Commission.

A trainee-advocate can provide legal services to his or her clients when working under the supervision of an advocate. The advocate-trainee shall pass a special examination and conclude an agreement with an advocate-supervisor. He or she must pay for the traineeship and complete at least an 80-hours initial training course during one year. The tax regime applicable to the trainees-advocates is the same as for the advocates. The duration of the traineeship is 18 months. An advocate cannot supervise more than 2 trainees simultaneously. After the completion of the traineeship the trainee shall pass a qualification examination.

It is noteworthy that the candidate to the traineeship must submit to the Licencing Commission, among other documents, the medical certificate. It is not specified in the Law what kind of medical certificate it should be.

The Ministry of Justice issues licences to practice law. A refusal to issue a licence can be appealed against to the court. The Law provides the grounds for the annulment of the licence, which can be done only after a relevant decision taken by the Commission on Ethics and Discipline.

Activities which are incompatible with legal profession are as follows:

- holding any paid position except the positions related to scientific or teaching activities, and carrying out activities as an arbitrator
- entrepreneurial activities
- notary's activity
- other activities that harm the prestige and independence of legal profession and moral norms.

Foreign nationals can be admitted to practice law in Moldova under certain conditions and subject to certain limitations, namely:

- They have to meet the same criteria as the Moldovan citizens for the admission to the legal profession but the Moldovan citizenship (legal education, absence of criminal convictions, etc.)
- They have to confirm their status of a lawyer in another state
- They have to be included in the special register of foreign lawyers held by the Union of Lawyers
- Foreign lawyers cannot represent clients before courts or other public authorities except in international arbitration tribunals. Should the interests of the client require, a foreign lawyer may provide assistance to a Moldovan lawyer.

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[61] The following categories of persons are exempt from the obligation to sit the examination:
- persons holding a PhD degree
- those who have previous experience of working as a judge or a prosecutor for not less than 10 years (if they submitted an application for bar license within 6 months after resignation or continued their work in the field of law after resignation).

Freedom of exercise of the legal profession

There are only certain provisions of general nature aiming at ensuring independence of legal profession and non-interference into lawyers' activities.

There are several specific provisions that are designed to provide certain safeguards for lawyers:

- A search of lawyers' homes or working premises, transports, seizure of their belongings and documents, search and seizure of their mail and correspondence, interception of their telephones is only allowed on the basis of court orders
- Lawyers cannot be subjected to body and personal search when exercising their professional duties except in cases of obvious breaches of law
- In case of detention of lawyers or bringing them to criminal liability, the Ministry of Justice and the Council of the Union of Lawyers shall be notified within 6 hours from the moment of detention or bringing to criminal liability
- A lawyer cannot be interrogated with regard to his/her relations with the person to whom the lawyer provides or has earlier provided legal assistance
- Lawyers have the right to request information, characteristics, copies of documents that they need for providing legal assistance from judicial, law enforcement, and public authorities, and from other organizations who are obliged to provide the requested materials.

Lawyers are generally free to express their opinions. The Statute of the Legal Profession specifically provides that lawyers cannot be held liable for their verbal or written statements expressed before courts, other jurisdictional authorities, law enforcement bodies, and other authorities (art. 56-(4)).

However, lawyers are not allowed to use expressions that may harm courts or parties to a trial both during the court hearings and outside the courtroom (art. 57-(2) of the Statute of the Legal Profession). Likewise, lawyers may not knowingly provide false or misleading information (art. 57-(35) of the Statute) and specifically they must not provide such information to courts (par. 6.4 of the Code of Ethics (Deontology) of Lawyers).

One of the ECtHR's judgments (see the case: *Amihalachioaie v. Moldova*) specifically referred to the issue of freedom of expression for lawyers. Mr Amihalachioaie, then the President of the Union of Lawyers, heavily criticized the Constitutional Court of Moldova with respect to one of its decisions. Following those remarks, he was fined by the Constitutional Court. After that he submitted an application to the ECtHR which found a violation of art 10 of the European Convention on Human Rights. Following the ECtHR's decision, the sanction applied on Mr Amihalachioaie was lifted.

Under art. 55 of the Law on the Bar, lawyers are not allowed to disclose any information that has become known to them with regard to legal assistance provided by them and to transfer to third persons any documents related to their assignments without the client's consent. This duty is not limited in time. However, neither the Criminal Code nor the Code of Misdemeanours provides for any specific liability for the breach of attorney-client privilege by third persons, including law enforcement bodies. There are only general provisions on illegal interception of correspondence or calls (art. 178 of the Criminal Code).

As stated above, law enforcement bodies must obtain a court order for intercepting correspondence or telephone conversations of lawyers as well as for conducting personal search of lawyers or the search in their living or working premises. Thus, it is possible to say that attorney-client privilege does not benefit from any particular legal protection (as compared to general legal provisions on the protection of private correspondence/communication) in cases of breaches by third parties (including law enforcement agencies).

Lawyers are required to pay annual fees established by the Congress. Currently the annual fees constitute MDL 1200 (approx. EUR 60). If a member of the Union does not pay the fees for a period of more than 6 months, his/her licence can be suspended.

Under the Law on Preventing and Fighting Money Laundering and Financing Terrorism (no. 308 of 22 Dec. 2017) lawyers have a direct obligation for lawyers to report suspicious cases of money laundering of their clients.

The provisions of the Law generally transpose into Moldovan law the provisions of the EU Directive 2015/849 and a number of requirements of international standards on preventing and fighting money laundering, financing of terrorism and proliferation of weapons of mass destruction adopted by the Financial Action Task Force.

In 2019 the Council of the Union of Lawyers adopted a number of criteria and risk factors related to money laundering and financing of terrorism in the activity of lawyers. However, it is not yet clear how this mechanism will apply to lawyers.

According to the Law on the Bar lawyers are obliged to undergo at least 40 hours of continuous legal education every year (art. 54-(1)-i)) and the trainee lawyers have to undergo 80 hours of the initial training programme during the course of their training period (art. 15-(6)-b) of the Law).

The Statute of the Legal Profession provides for various forms of continuous professional training of lawyers. It should not necessarily be participation in various trainings or seminars and may also be completed through participation in various events organised or coordinated by the Union of Lawyers, online-trainings, preparing various articles, reviews, information notes, studies on legal issues, participation in special events at educational institutions, participation in other events recognized by the governing bodies of lawyers, etc.

It is necessary to mention that despite the existence of the minimum obligatory number of hours of continuous education for lawyers, this rule has not been strictly observed and monitored. However, with the development of the Lawyers Training Centre (see below) this may change in the near future.

In 2018 the Lawyers Training Centre was established within the Union of Lawyers. Its major tasks are as follows:

- developing the general plan of training activities for the continuous education of lawyers and initial training of trainee lawyers
- developing measures for implementing the training plans
- developing yearly plans for evaluation of knowledge and supervising the process of continuous training of lawyers
- monitoring the number of hours of trainings passed by lawyers and presenting the respective information to the Council of the Union.

The Lawyers Training Centre actually develops and delivers the trainings for lawyers and for trainees. Currently most of them are delivered free of charge. The majority of trainers are practicing lawyers, though non-lawyer trainers from other institutions can be invited to deliver trainings on specific topics.

The Law provides that each lawyer shall have a “suitable” office to provide legal services. It appears, however, that this requirement is not strictly applied in practice, and many lawyers are registered on their private addresses

Free Legal Aid

The following legal enactments regulate the provision of free legal aid in Moldova:

- the Law on Legal Aid Guaranteed by State (no. 198-XVI 26 Jul 2007)
- the Regulation on the National Council for Legal Aid Guaranteed by State (approved by the Decree of the Minister of Justice no. 18 of 24 Jan. 2008).

There are two types of legal aid guaranteed by state:

1) **Primary** legal aid (includes general consultations and providing legal information, help in drafting legal documents, etc.). The primary legal aid can be provided by paralegals or NGOs specialising in this type of legal aid to all persons regardless of their level of income.
2) **Qualified/secondary** legal aid (legal advice, representation in courts and other public bodies, representation, and defence at pre-trial/investigation stage in criminal cases).

The qualified legal aid can only be provided by qualified lawyers. It is provided:

- to persons in need of legal help in criminal cases who cannot afford it
- to those who need urgent legal assistance in cases of detention in criminal or misdemeanour cases
- in criminal cases in situations when participation of a lawyer is obligatory
- in certain specific types of civil cases
- in all types of cases (criminal, civil, administrative) to persons whose income is below certain thresholds and the case is complex enough from legal or procedural point of view
- to children who are victims of crime or victims of domestic violence.

The system of legal aid is organised and administered by 3 major stakeholders: the Ministry of Justice, the Union of Lawyers[62], and the National Council on Legal Aid Guaranteed by State (hereafter: National Legal Aid Council).

The general role of the Ministry of Justice is to develop the policy in the area of legal aid, draft relevant legislation, monitor the functioning of the legal aid system, develop the budget for the system, etc. The Union of Lawyers participates in developing the criteria for selecting lawyers for the legal aid system and the criteria for the assessment of the quality of the legal aid service, participates in monitoring the activity of the lawyers involved and imposes sanctions on them.

The main body ensuring the administration and functioning of the legal aid system is the National Legal Aid Council. It consists of two members appointed by the Ministry of Justice, two members appointed by the Union of Lawyers, one member appointed by the Ministry of Finance, and one member representing civil society or the academy. Members are appointed for a 4-years term (can be re-appointed for another term only once). The President of the Council is elected out of its members by a secret vote. The current activities of the Council are ensured by the administrative staff headed by the Executive Director.

The Council ensures legal aid through its territorial offices (established in each of the cities where respective courts of appeal are located).

The lawyers in Moldova are not obliged to provide any amount of *pro bono* work. It remains

[62] The Law on Legal Aid Guaranteed by State refers to the Bar Association and not to the Union of Lawyers. However, the Law passed in 2007, when the older version of the Law on the Bar was still effective. That version only provided for one single bar association for the whole country (and no territorial bars as it currently does) which was later substituted by the Union of Lawyers. Thus, the reference to the Bar Association in the Law on Legal Aid Guaranteed by State shall be read as the Union of Lawyers.

fully at their discretion. However, the lawyers who participate in the programme of legal aid are guaranteed by the state the pre-determined fees for their services.

Professional liability of lawyers

Any breach of lawyer's professional duties may lead in principle to disciplinary liability. The sanctions that can be applied for disciplinary and professional violations by lawyers can be as follows:

- warning
- reprimand
- fine (of MDL 1000-3000 – approx. EUR 50-150)[63]
- suspension of activity (suspension of licence) – in cases of incompatibility or for non-payment of fees for more than 6 months
- withdrawal (annulment) of licence (disbarment).

The disbarment sanction can be applied for the following violations:

a) a repeated failure by the lawyer, within one year, to fulfil his/her professional duties, if the disciplinary sanctions have been previously applied to him/her
b) practicing legal profession during the period on which the lawyer's licence was suspended or failing to submit the licence or lawyer's ID within the established period to the Council of the Union of Lawyers by a lawyer whose activities are suspended
c) systematic violations by a lawyer of the requirements on providing legal aid guaranteed by the state
d) a repeated unreasonable refusal to provide legal aid guaranteed by the state at the request of the territorial offices of the National Council for Legal Aid Guaranteed by State
e) unlawful actions by a lawyer in the process of obtaining a licence
f) a gross violation of the Code of Ethics of Lawyers
g) conviction of the lawyer for committing a criminal offence which has become enforceable
h) losing the citizenship of Moldova
i) gross violation of the provisions of the contract for legal assistance
j) failing to indicate in the contract for legal assistance the amount of the legal fees received from the client or indicating a lower (than the actual) amount of fees.

Sanctions shall be imposed within 2 months from the moment the respective violations are identified. The overall limitation period is 1 year from the moment of committing a violation. Decisions on sanctioning of lawyers can be challenged in the court of law.

Initiating disciplinary proceedings, investigation and examination of the violation fall under the competence of the Commission on Ethics and Discipline of the Union of Lawyers. The proceedings can be initiated if the Commission has sufficient grounds for that. That implies that the proceedings can be launched upon a complaint from a third party (clients, judges, other persons) or by the Commission *ex officio* (should it get hold of certain information on the violations committed by lawyers).

As a general rule, the hearings held by the Commission on Ethics and Discipline are public. However, the Commission may take a decision to hold a closed hearing. The decisions taken by the Commission are published on the Union of Lawyers' web-site.

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[63] The fine is removed from the list of sanctions for disciplinary penalties in the amendments to the Law on the Bar.

There is a general provision establishing obligatory professional liability insurance of lawyers (art. 61 of the Law on the Bar). The minimum insurance amounts should be established by the Council of the Union. However, in fact, the system of professional insurance does not fully function. Only few lawyers actually insured their professional liability.

UKRAINE

Legal framework

As of December 2018, the Ukrainian bar included 45 307 members. On 1 June 2019, the number of Ukrainian lawyers surpassed 50 000, and is still growing. The Ukrainian bar is composed of higher self-governance bodies at national and regional (*oblast*) levels and councils (also at national and local levels). 36,59 % of Ukrainian lawyers are women, 63,41 % - men.

The Ukrainian National Bar Association (UNBA) is an all-Ukrainian unique official bar association established on 17 November 2012. It has a website, which can be consulted in both Ukrainian and English:

In recent years, Ukraine was undergoing significant judicial reforms, which had certain repercussions on the institutional set-up and functioning of the legal profession. In this context, the CoE was actively engaged in the cooperation programmes and other forms of assistance to the Ukrainian authorities. As a result, several assessments of legislation, opinions and other analytical documents had been produced in connection with the judiciary and the legal profession in Ukraine, which should be taken into account when analysing the situation in Ukraine[64].

The fundamentals of organisation and functioning of the legal profession are guaranteed by the Constitution of Ukraine (Article 131-2). The Law of Ukraine "On the Bar and Practice of Law" No. 5076-VI dated 5 July 2012 is the main legal enactment relating to the legal profession in Ukraine[65]. It comprises 10 sections[66] covering all main aspects of the legal profession, including the access to the bar, the exercise of the legal profession and the professional liability of lawyers. Specific provisions of the Law regulate self-governance of the lawyers.

Extensive information about the history of the Law is available on the website of the Ukrainian Parliament (in Ukrainian only)[67]. It appears from its legislative history that the then draft law was amended, in particular, to address the comments provided by the Venice Commission[68]. Several other laws, the Government regulations and the legal acts adopted by the UNBA concern various aspects of the set-up and functioning of the legal profession in Ukraine. There is currently no significant draft legislation pending before Parliament relating to the legal practice.

Legal "monopoly"

Under the Ukrainian law[69], only lawyers admitted to the bar have the right to represent clients before the courts and defend a person in the framework of criminal prosecution. However,

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64 One of the most recent opinions was provided in November 2018 regarding a draft law on the bar, although ultimately the Ukrainian authorities decided to withdraw this draft law from Parliament: https://rm.coe.int/opinion-draft-law-on-the-bar-eng/16808f0e2b

65 The English version of this law is available on the webpage of the UNBA: https://en.unba.org.ua/regulatory-acts. It is presumed that this version is updated and translated correctly from Ukrainian.

66 Section I – "General provisions"; Section II – "Acquisition of right to practice law. Organisational forms of practice of law"; Section III – "Types of practice of law. Attorney's rights and duties. Guaranties of practice of law"; Section IV – "Contract on provision of legal services"; Section V – "Suspension and termination of a right to practice law"; Section VI – "Attorney's discipline"; Section VII – "Attorney's self-government"; Section VIII – "Practice of law in Ukraine by attorneys of foreign states. Specific features of status of attorney of a foreign state."; Section IX – "Final provisions"; Section X – "Transitional provisions".

67 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=43306

68 See Joint Opinion No. 632/2011 by the Venice Commission and the Directorate of Justice and Human Dignity within the Directorate General of Human Rights and Rule of Law of the Council of Europe adopted on 14-15 October 2011 and other related documents: https://www.venice.coe.int/webforms/documents/?opinion=632&year=all

69 Amendments to the Constitution of Ukraine and to the Law of Ukraine "On the Judiciary and the Status of Judges" entered into force on 30 September 2016. Additional information about these amendments, as well as other useful information about the

exceptions are envisaged in certain types of proceedings (labour disputes, social security disputes, electoral proceedings, cases of minor importance and some others).

On 31 October 2019, the Constitutional Court of Ukraine declared compliant with the constitutional provisions a draft law aimed at the abolishment of the legal monopoly of advocates. This draft law is still pending before Parliament.

During the fact-finding mission to Ukraine it appeared that the issue of the legal monopoly of lawyers was one of the most controversial. The representatives of the UNBA stressed the importance to preserve the legal monopoly of lawyers. The representatives of the Ministry of Justice noted that the legal monopoly created difficulties for the state agencies and the bodies of local self-government because they needed to engage public money to pay legal services of lawyers.

Correlative to the legal monopoly of lawyers is the system of the free legal aid, which, according to the Council of Europe previous assessments, is generally compliant with the relevant international standards[70].

Code of ethics

The Code of Ethics of Ukrainian lawyers in its current version was adopted by the Assembly of the Ukrainian lawyers on 15 February 2019[71].

Institutional framework

Article 2 of the Law provides that:

> "*1. The bar of Ukraine is a public, self-governing institution ensuring provision of legal defence, representation and other types of legal services on a professional basis and independently resolving issues of organization and operation of the bar of Ukraine in accordance with the procedure provided for by this Law.*
> *2. The bar of Ukraine consists of all Ukrainian advocates who have a right to practice law.*
> *3. For the purpose of ensuring the proper practice of law, of complying with the guarantees of the practice of law, of protecting advocates' professional rights, of ensuring a high level of professionalism of advocates and of resolving issues associated with disciplinary proceedings against advocates, in Ukraine there shall operate the advocates' self-government*".

It transpires from the above provision that the bar in the meaning of the Law is not a specific body or organisation but an informal association of all lawyers.

Article 17 of the Law provided that:

> "The ***Bar Council of Ukraine*** shall maintain the Unified Register of Advocates of Ukraine for the purpose of collection, storage, recording and provision of reliable information on the number and names of advocates carrying out activities in Ukraine and of the advocates of foreign states who have acquired the right to practice law in

legal monopoly, is reflected in the assessment of the recent judicial reforms in Ukraine elaborated in the framework of the Council of Europe project "*Support to the implementation of the judicial reform in Ukraine*" dated April 2019: https://rm.coe.int/doc-02-assessment-part-2/168097a77a

[70] See, in particular, the he "*Assessment of the free secondary legal aid system of Ukraine in the light of Council of Europe standards and best practices*" of September 2016*: https://rm.coe.int/16806ff4a8*

[71] This document is available on the website of the UNBA in Ukrainian only: https://unba.org.ua/assets/uploads/legislation/pravila/2019-03-15-pravila-2019_5cb72d3191e0e.pdf

Ukraine in accordance with this Law, and on the organizational forms of the practice of law selected by advocates. The respective ***regional bar councils*** and the bar Council of Ukraine shall enter the relevant information into the Unified Register of Advocates of Ukraine".

As mentioned above, the regional bar councils are executive organs of the lawyers' self-governmental organisations functioning on a permanent basis.

Section VII of the Law provides detailed provisions in respect of the organisation and functioning of the UNBA and the organisational forms of attorneys' self-government[72]. In addition, Article 46 § 2 of the Law specifies that advocates' self-government shall be accomplished through the operation of conferences of advocates of the region, of regional bar councils, of the qualification and disciplinary commissions of the bar, of the Higher Qualification and Disciplinary Commission of the Bar, of regional bar audit commissions, of the Higher Audit Commission of the Bar, of the Bar Council of Ukraine, and of the Congress of Advocates of Ukraine.

The subsequent provisions of the Law detail the composition, powers, the modalities of election of their members and other issues relating to the above-mentioned institutional components of the advocates' self-government. There are 31 committees within the UNBA, among them, the committee on the gender politics and on the foreign relations.

The representations of the UNBA abroad are created on the basis of Regulation No. 17 of 4 July 2015 of the Bar Council of Ukraine, as amended by Regulation No. 159 of 17 December 2015[73]. There are currently 31 foreign representations of the UNBA. Such a system of foreign representations is rather unique as no other participating country has anything similar, although it appears that those representations are mainly symbolic.

Article 58 § 2 of the Law provides that the rate of advocates' annual contributions for ensuring implementation of advocates' self-government shall be determined taking into account the need to cover the cost of operation of the regional bar councils, the Bar Council of Ukraine, the Higher Audit Commission of the Bar and the cost of maintenance of the Unified Register of Advocates of Ukraine and cannot exceed the rate of minimum subsistence level for employable persons, as of 1 January of a relevant calendar year.

The annual laws on "the State Budget" provide each year the rate of the advocates' annual payment for the membership in the bar[74].

70% of the above annual contribution shall be paid to a regional bar council, while the remaining 30% - to the UNBA.

In parallel to the UNBA and a few associations of lawyers are established in Ukraine as non-governmental entities.

The Association of Ukrainian lawyers is acting in the form of a non-profit public association in the interest of the profession of lawyers[75]. A "women's club" is operating within this association. The Ukrainian Bar Association includes around 7 000 members (lawyers and the

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[72] The conference of attorneys of the region (oblast), the regional (oblast) bar council, the Bar Council of Ukraine, the congress of attorneys of Ukraine.

[73] The English version of the Regulation is available on the website of the UNBA: https://unba.org.ua/assets/uploads/legislations/pologennya/2015.12.17-unba-rep-office-regulation.pdf

[74] For 2019, this rate was established in the amount of 1921 UAH, which is equal approximately to 70 EUR.

[75] The website is in Ukrainian only: https://www.uaa.org.ua/pro-aau

representatives of other legal professions)[76]. An "International Relations Officer" is operating at the Ukrainian Bar Association. The Association of Women Lawyers of Ukraine was established in 2017 in Lviv. It provides trainings on the issues on gender policy, anti-discrimination and other issues. It runs on-line trainings on gender education. Every year the association is organising a forum on gender issues. The association conducted the first study in Ukraine on women in the legal profession. The association provides legal assistance to women from vulnerable social groups.

As regards the ***organisational forms*** of legal practice, lawyers can exercise individually, in the bureau or a company. An advocate who practices law as an individual practitioner is a self-employed person. A bureau is a legal entity founded by one advocate and operating under the articles of association. The name of a law office must contain the surname of the advocate who founded it. A law company (firm) is a legal entity founded through the association of at least two advocates (members) and operating under the articles of association. The respective law firm shall be named as a party to the agreements on the provision of legal services. On behalf of the law firm an agreement on the provision of legal services shall be signed by a member of the law firm authorized by the power of advocate or the articles of association of the law firm. At present, 66,9 % of lawyers exercise individually; 24,8 % - in law firms; 8,3 % - in the bureau.

Access to legal profession

In Ukraine, the access to the legal profession has a twofold objective. First, it should provide a real possibility for every graduate lawyer to be admitted to the bar without unnecessary difficulties and obstacles. Second, it should have sufficient safeguards capable of ensuring that only qualified lawyers of high moral character are able to become lawyers. The issue of the admission to the bar is regulated in Section II of the Law.

Pursuant to the Ukrainian law, any individual who has obtained a complete higher legal education, has a command of the official language and at least a two-year experience in the field of law, has passed the bar examination, has successfully completed traineeship (except in the cases established by the Law), has taken the oath of the advocate of Ukraine, and has obtained the certificate of right to practice law is eligible to be an advocate (Article 6 of the Law).

The Law provides that certain persons cannot be lawyers owing to various reasons relating to their previous activities[77]. The list of those reasons is limitative. Similarly, the Law provides for the instances of incompatibility with the profession of lawyer. The list of occupations incompatible with the legal profession is also limitative. The Law provides – Article 59 – that the attorney of a foreign state may practice law in Ukraine taking into account specific legal provisions.

The attorney of a foreign state – who is not necessarily the citizen of that state – can apply for the inclusion of his or her name into the Unified Register of Lawyers of Ukraine. The Law envisages a detailed procedure for this. It is noteworthy that the Law does not provide for any

[76] The website is also available in English: https://uba.ua/eng/

[77] "No person may be an advocate if he/she:
1) has unspent or unexpunged per the legally established procedure conviction for the grave, particularly grave crimes as well as medium-gravity crimes for which he/she has been sentenced to the punishment of imprisonment
2) was found by court partially or fully incapable
3) was disbarred from practicing law – in the subsequent two years as of the date of the decision on disbarment
4) was dismissed from the position of a judge, prosecutor, investigator, notary, public service officer or local self- government public officer for violation of the oath or for a corruption offence – in the subsequent three years as of the date of such dismissal" (Article 6 § 2 of the Law).

specific examination of the potential candidate. It is not specified in the Law the attorney of which foreign state may apply to become a lawyer in Ukraine. The law also provides for a limited number of reasons for the refusal to grant the requested application. There are no specific provisions in the Law relating to the occasional, not permanent, practice of law in Ukraine by an attorney of a foreign state.

According to the information available on the website of the UNBA, there are currently 24 foreign lawyers registered in Ukraine[78].

Under the Ukrainian law, there is no obligation to rent/own an office to be able to practice law.

Freedom of exercise of the legal profession

The freedom of exercise of the profession of lawyer is an essential component of this profession. It often requires the state to take specific measures to respect, protect and promote the freedom of exercise of the legal profession.

Article 23 of the Law provides significant guarantees of the exercise of the legal profession in Ukraine. In addition to general guarantees there are, in particular, the following safeguards aimed at ensuring the protection of the attorney-client privilege and other essential rights and freedoms of lawyers:

- It is prohibited to demand disclosure of data constituting advocate-client privilege from an advocate, an assistant advocate, advocate's trainee or a person in employment relationship with an advocate, law office, law firm, as well as from a person whose right to practice law was suspended or terminated. None of them may be interrogated about the information except where a person who communicated the respective information has exempted the said persons from the duty to maintain advocate-client privilege as prescribed by law
- Search operations or investigative actions that require special court permission shall be conducted in relation to an advocate on the basis of the respective court decision made upon the motion of the Prosecutor General of Ukraine, his/her deputies, prosecutors of the regional Prosecutor's Offices
- It is prohibited to examine, disclose, demand procurement of or seize documents relating to the practice of law
- It is prohibited to involve an advocate in confidential collaboration during search operations or investigative actions if such collaboration relates or may lead to the disclosure of advocate-client privilege
- It is prohibited to interfere with private communication of an advocate and a client
- A body or officials which detained or imposed restrictive measures on an advocate must immediately give notice thereof to the respective regional bar council
- A report of a suspected criminal offense by an advocate may be made exclusively by the Prosecutor General of Ukraine, his/her deputy, the prosecutors of the regional Prosecutors' Offices
- None of the advocate's statements made in the case including those reflecting the stand of the client, and none of his/her statements in mass media may serve the basis for bringing the advocate to liability, as long as his/her statements are not in breach of the advocate's professional duties.

The Law provides specific guarantees in case of a search on the lawyer's premises[79].

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[78] https://erau.unba.org.ua/. Consulted on 11 November 2019.

[79] "In the event of a search or inspection of an advocate's residence, other possessions or premises where he/she practices law, or in the event of a temporary access to the advocate's belongings and documents, the investigating judge or the court shall

A specific reference to the international standards with regard to the lawyers' rights is reflected in Article 23 § 3 of the Law:

> "*Governmental bodies, bodies of local self-government, their officials and officers shall adhere in their relations with advocates to the Constitution of Ukraine and laws of Ukraine, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto ratified by the Verkhovna Rada of Ukraine, and to the practice of the European Court of Human Rights*".

There are no provisions in the Ukrainian legislation putting an obligation onto lawyers to report any illegal activity of their clients, including the money laundering.

Under Ukrainian law, all lawyers are obliged to constantly improve their "professional level" (Article 21 § 1 (4) of the Law).

The UNBA adopted special regulations relating to the continuous legal education of lawyers. The number of hours of trainings varies depending on the lawyer's experience. During the first three years of practice layers are required to complete at least 48 hours of legal training. All lawyers are required to complete at least 10 hours of legal training per year.

The **Higher School of Advocacy** was established with a view to centralising and managing the provision of services in the field of legal education of lawyers. It is an academic, educational and training institution created by the decision of the Bar Council of Ukraine. The Higher School of Advocacy's main mission is the organisation of the continuous training of advocates but is not limited to it. For instance, the school is also aiming to promote and of disseminate legal information, to develop legal education and training, to raise the legal culture of the population for the establishment in Ukraine of international standards of human rights and effective implementation of their rights. During the fact-finding mission to Ukraine the consultant was provided with detailed information about the functioning of the school. Any provider of services in the field of the continuous legal education for lawyers shall be registered with the school which carries out a thorough analysis of the quality of the proposed services. The local bar associations are *de jure* participants of the school. Private operators can register with the school but are required to pay annual fees. At present, around 80 % of all training in Ukraine are provided to lawyers for free.

Under the Ukrainian law the lawyers shall not be liable in case of reporting the suspicious transactions in connection with money laundering. Such a reporting shall not be considered to be in breach of the professional secret. However, the law does not impose on lawyers the obligation to report.

Free Legal Aid

The procedure for and conditions of involving advocates in provision of free legal aid is established by the Law of Ukraine "On Free Legal Aid". The system of state-guaranteed legal aid in Ukraine consists of 4 levels:

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always specify in their decision the list of items and documents to be found, discovered or seized in the course of conduct of the investigative action or of application of an injunction in the criminal proceedings, and shall also take into account the requirements of paragraphs 2-4, part one of this Article. Presence of a representative of the regional bar council is required during a search or inspection of the advocate's residence, his/her other possessions or premises where he/she practices law, as well as during temporary access to the advocate's belongings and documents, except for the cases provided for by paragraph four of this part. In order to ensure participation of the said representative, the officer who is to conduct the respective investigative action or apply an injunction in the criminal proceedings shall give prior written notice thereof to the regional bar council at the location where such procedural action is to be conducted" (Article 23 § 2 of the Law).

- Coordination Centre for Legal Aid Provision
- regional centres for secondary legal aid provision
- local centres for secondary legal aid provision
- and legal aid bureaus.

The Coordination Centre provides general management, overseeing and ensuring the strategic development of the legal aid in Ukraine. There are 23 regional centers in the administrative centers of the regions, and 84 local centers in medium and big cities. Also there are 429 legal aid bureaus in small and remote localities.

Free legal aid is defined as the legal aid guaranteed by the state and funded in full or in part by the State Budget of Ukraine, the local budgets and other sources. The right to free legal aid is guaranteed by the Constitution of Ukraine as the right of a citizen of Ukraine, a foreigner, a stateless person, including refugees, or other persons seeking additional protection, to receive free primary legal aid in full scope, and the right of certain categories of entities to receive free legal aid in cases set forth by the law.

The system of free legal aid includes:

- provision of free primary legal aid
- provision of free secondary legal aid.

Free primary legal aid is the type of a state guarantee expressed in informing persons on their rights and freedoms, procedures for their execution, their restoration in case of violation, and procedures for appealing against decisions, actions or lack thereof by the state authorities, local self-government authorities, and public officials. It includes the following types of legal services:

- provision of legal information
- provision of consultations and explanation of legal issues
- drafting statements, complaints and other legal documents (except for procedural documents)
- assisting in an individual's access to the secondary legal aid and intermediation.

Free secondary legal aid is the type of a state guarantee that provides equal access to justice for everyone. Free secondary legal aid includes the following types of legal services:

- defence
- representation of the interests of persons that have a right to free secondary legal aid in the courts, other state agencies, self-government authorities, and versus other persons
- drafting procedural documents.

The eligibility to both primary and secondary free legal aid is based on the financial situation of the applicant. Moreover, certain categories of the population can benefit from free legal aid irrespective of their financial situation (war veterans, refugees etc.).

Assessment of the quality, completeness and timeliness of provision of free primary legal aid by advocates shall be made upon request by the bodies of local self-government, and in the case of free secondary legal aid – upon request by a body (agency) authorized by law to provide free legal aid, and by the commissions formed by regional bar councils for that purpose.

Lawyers can be engaged in the provision of free legal aid on a voluntary basis only. Lawyers who wish to provide free legal aid shall enter into civil agreements with the free legal aid cooperation centres. At present, around 7 000 lawyers are registered with the free legal aid centres, but only 3 200 actively provide free legal aid. A lawyer can suspend his or her participation in the free legal aid system at any time.

Professional liability of lawyers

The grounds for the disciplinary proceedings against lawyers are provided in Article 34 of the Law[80]. They warrant no specific comments.

Under the Ukrainian law, any person who has become aware of the advocate's misconduct which may serve the ground for disciplinary liability of the advocate shall have the right to submit an application (complaint) regarding such misconduct to the qualification and disciplinary commission of the bar[81].

The procedure is specified in Articles 37 – 42 of the Law. An application shall be registered by the qualification and disciplinary commission of the bar. The investigation is conducted by the staff members of the disciplinary chamber of the disciplinary and qualification commission of the bar duly authorised by the chairman. Based on the results of this investigation, the disciplinary chamber of the disciplinary and qualification commission adopts a decision, by a majority vote, to institute disciplinary proceedings or to refuse it. The decision on the institution of proceedings is served to the lawyer, together with the investigative report. The decision to initiate or refuse disciplinary proceedings can be appealed within thirty days starting from the date of its adoption, to the High Qualification Commission of the Bar or to the court.

The disciplinary action is then considered by the disciplinary chamber of the disciplinary and qualification commission of the bar, based on the adversarial principle. The advocate subjected to the disciplinary action and the person who initiated the disciplinary action against the advocate shall have the right to provide explanations, to put questions to other participants in the proceedings, to raise objections, to present evidence in support of their arguments, to file motions and requests for withdrawals, and to use legal services of an advocate[82].

The decision of the disciplinary chamber of the disciplinary and qualification commission of the bar shall be reasoned. The member of the disciplinary chamber who conducted investigation of the allegations of the advocate's misconduct shall not participate in voting. It can be appealed to the High Qualification Commission of the Bar or to the court.

There are three types of disciplinary sanctions:

- Warning
- Suspension of the right to practice law for a period from one month to one year
- For Ukrainian advocates – disbarment with further exclusion from the Unified Register of Advocates of Ukraine, and for advocates of foreign states – exclusion from the Unified Register of Advocates of Ukraine.

[80] "1. Misconduct by the advocate shall be the ground for disciplinary liability of the advocate. 2. Misconduct of the advocate is: a) non-compliance with the requirements as regards incompatibility; b) violation of the oath of advocate of Ukraine; c) violation of the rules of professional conduct; d) disclosure of advocate-client privilege or performance of actions that resulted in the disclosure thereof; e) failure to perform or to properly perform his/her professional duties; f) failure to comply with the decisions taken by the bodies of advocates' self-government; g) violation of other advocate's duties provided for by law.

[81] Article 36 § 1 of the Law.

[82] Article 40 § 2 (2) of the Law.

Under general provisions of civil law, any person might bring an action against a lawyer for any alleged malpractice.

There is no compulsory professional insurance for lawyers in Ukraine.