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SHADOW REPORT

**THE BAR OF UKRAINE:
THE LESSONS LEARNED FROM THE EARLY
YEARS OF SELF-GOVERNANCE**

AGENCY FOR LEGISLATIVE INITIATIVES
KYIV, 2018

Compiling and presenting shadow analytical reports is part of a project implemented by the Agency for Legislative Initiatives, a non-governmental organization, under the USAID «RADA: Responsible Accountable Democratic Assembly» Program, which is implemented by the East Europe Foundation.

The shadow report entitled «The Bar of Ukraine: the Lessons Learned from the Early Years of Self-Governance» was compiled by the Agency for Legislative Initiatives in cooperation with the Tomorrow's Lawyer non-governmental organization at the request of the Verkhovna Rada of Ukraine Committee for Legal Policy and Justice in order to support the latter in administering its oversight function.

The Agency for Legislative Initiatives aims to promote the strengthening of democratic values, the development of political culture and legal awareness, the scaling up of best international practices for effective government bodies to be built, and the development of Ukraine towards integrating with the European Union.

While striving towards its mission, the Tomorrow's Lawyer develops and implements training programs for lawyers to bolster their leadership in reform implementation, reinforce the legal community and strengthen the rule of law in Ukraine, and builds up and supports a viable professional network of opinion leaders among the bar who adhere to the values of fair justice, provide legal services of the highest ethical standards, and serve as effective agents of social transformations.

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ABBREVIATIONS

AC – attorney company (a group practice)	HQDC – Higher Qualification and Disciplinary Commission
AO – attorney's office (a solo practice)	
BC – bar council	HSA – Higher School of Attorneys
BCU – Bar Council of Ukraine	IBA – International Bar Association
CAP – Code of Administrative Procedure	ICJ – International Commission of Jurists
CCBE – Council of Bars and Law Societies of Europe	JRC – Judicial Reform Council
CCiP – Code of Civil Procedure	LE – legal entity
CCoP – Code of Commercial Procedure	NABU – National Anti-Corruption Bureau of Ukraine
CCoU – Constitutional Court of Ukraine	ORDLO – isolated districts of Donetsk Oblast and Luhansk Oblast
CCrP – Code of Criminal Procedure	PACE – Parliamentary Assembly of the Council of Europe
CCU – Criminal Code of Ukraine	PCRB – professional conduct rules of the bar
CMU – Cabinet of Ministers of Ukraine	QDCB – Qualification and Disciplinary Commission of the Bar
CoE – Council of Europe	QDCPP – Qualification and Disciplinary Commission of Public Prosecutors
CUAO – Code of Ukraine on Administrative Offenses	RACB – regional audit commission of the bar
ECHR – European Convention on Human Rights	RBC – regional bar council
ECtHR – European Court of Human Rights	SCU – Supreme Court of Ukraine
FLA – free legal aid	SGBA – self-governing bodies of attorneys
FSLA – free secondary legal aid	UN – United Nations Organization
HACB – High Audit Commission of the Bar	UNBA – Ukrainian National Bar Association
HCJ – High Council of Justice	URAU – Unified Register of Attorneys of Ukraine
HQCB – Higher Qualification Commission of the Bar	VRU – Verkhovna Rada of Ukraine
HQCJU – High Qualification Commission of Judges of Ukraine	
HQDBC – Higher Qualification and Disciplinary Bar Commission	

ABSTRACT

The report is devoted to assessing the implementation of the Law of Ukraine «On the Bar and Practice of Law» adopted on July 5, 2012, which entered into force on August 15, 2012. The report examines the role of the bar in a democratic society, Ukraine's international commitments to protect the status of the legal profession and the establishment of a professional bar association, the goals and objectives of the public policy on regulating the bar and practice of law, and the challenges of the law enforcement in this area over the period from November 2012 until August 2018.

The report also analyzes the Draft Law of Ukraine «On the Bar and Practice of Law» approved by the Judicial Reform Council in June 2018 from the standpoint of effectively addressing the gaps and weaknesses of regulating the organization of the bar and practice of law in Ukraine.

SUMMARY

The report aims to analyze the public policy relevant to the bar and practice of law as well as the development of the bar as an independent self-governing public body over the period beginning with the nascence of the Ukrainian National Bar Association in 2012 until the present day

The performance status of Ukraine's relevant international commitments, the efficacy of the public policy relevant to the bar and practice of law, the challenges of implementing the Law of Ukraine «On the Bar and Practice of Law» adopted on July 5, 2012, and certain legislative initiatives submitted by VRU members and/or adopted during the above period are evaluated in the report.

Attention is also paid to the shifting the said public policy focus in view of the implementation of the judicial reform and the human rights strategy and the amendment of the Constitution of Ukraine (in relation to justice). Specifically, a separate place in the presented analysis is given to the new wording of the Law of Ukraine «On the Bar and Practice of Law» which was approved by the Judicial Reform Council in June 2018.

With this in view, the strengths, gaps, and disputable issues of the newly restated draft law, including the extent to which it allows responding to the present-day challenges of operation of the bar, are evaluated in the report.

The evaluation is built on the generally accepted international standards of practicing law which are set out in the following instruments: the United Nations Basic Principles on the Role of Lawyers, the Draft Universal Declaration on the Independence of Justice (the Singhvi Declaration), Recommendation No. R (2000) 21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer, the CCBE Charter of Core Principles of the European Legal Profession, and the CCBE Code of Conduct for European Lawyers.

Based on the evaluation results, the following conclusions were made:

1. It is a generally accepted international standard that the independent bar is a prerequisite for the rule of law and democracy to be strengthened in society.
2. Reforming the bar is part of the judicial reform and the human rights strategy that cannot be successfully implemented without the bar being independent and institutionally developed.
3. The public policy relevant to the bar and practice of law is ineffective. Defining the principles of organization and operation of the bar, the Law of Ukraine «On the Bar and Practice of Law» adopted on July 5, 2012 contains significant gaps that produce a tangible impact on the bar playing a discrete social role in society. For two years now this law has been kept unaligned with the Constitution of Ukraine after it was amended in terms of justice.
4. The development of the bar of Ukraine in 2012–2018 has revealed a number of gaps in the application of the law as well.
5. Despite certain gaps and a few disputable issues, the newly restated Draft Law of Ukraine «On the Bar and Practice of Law» approved by the Judicial Reform Council in June 2018 complies with the generally accepted international standards in broad terms. Should it be adopted, it would improve the principles of organization and operation of the bar to a great extent, address most of the problems the bar of Ukraine has faced in 2012–2018, and make sure that it develops in a progressive manner to the benefit of the public and fair justice.

INTRODUCTION

The relevance of the research subject is attributable to changes in the constitutional status and the objectives of the bar resulting from the amendment of the Constitution of Ukraine in what concerns justice, the monopolization of the right to act as a representative in court by the bar, the amendment of the CCoP, CAP and CCiP, the presence of gaps in the legislation regulating the bar and practice of law and in its application, the numerous facts of violation of the professional rights and professional activity guarantees of the bar, and the need to bring the legislation on the bar and practice of law into line with the legislative amendments made as part of the judicial reform. The approval of the Draft Law «On the Bar and Practice of Law» by the JRC [62] and the need to have it considered and adopted within the shortest time possible have also contributed to making the report relevant.

Under Clause 14 of Article 92 of the Constitution of Ukraine [1], the principles of organization and operation of the bar shall be determined exclusively by the laws of Ukraine.

This means that the power to determine the principles of organizing and operating the bar and of practicing law falls into the exclusive authority of the VRU.

The 2015–2020 Strategy for Reforming the Court Structure and Procedure as well as Those of Related Institutions of Law [12] define the bar as one of the law institutions of Ukraine's judicial system that pursue the goal of protecting the rights, freedoms, and interests of people and citizens, the rights and lawful interests of legal entities, and the interests of the state by resolving legal disputes in a timely, efficient, and fair manner and in accordance with the rule of law principles.

The strategy sets the priorities of reforming related institutions of law as a component of the judicial branch of government at the level of both implementing constitutional amendments and taking urgent steps of paramount

importance to enable the necessary positive changes in the operation of relevant institutions of law. According to Law of Ukraine No. 5076 «On the Bar and Practice of Law» adopted on July 5, 2012 (Law No. 5076) [7], the bar of Ukraine is a non-governmental self-governing body that provides defense, representation, and other types of legal services on a professional basis and is free to decide on its organization and operation in compliance with the procedure established by this law (Part 1 of Article 3 of Law No. 5076).

The bar is independent from government and local-self-government bodies as well as their officials and officers (Part 1 of Article 5 of Law No. 5076).

An independent and viable bar association is an integral part of a democracy guided by the rule of law. Fair and effective justice vitally requires both the court system and the legal profession to be independent. Like any other participants of the court system, attorneys and their associations are the pillar which the protection of the rule of law and human rights is built on. The results of a survey conducted among attorneys by Tomorrow's Lawyer, a non-governmental organization, have showed that in order to play their role, «attorneys have to work in an environment making it possible for them to enjoy their rights and freedoms and guaranteeing them protection from any form of intimidation, persecution, or inappropriate influence» [99].

The state shall create proper conditions for the operation of the bar and shall make sure that the guarantees provided for the practice of law are observed (Part 2 of Article 5 of Law No. 5076).

In Ukraine, attorneys' self-governance shall pursue the following goals:

- ensuring that the practice of law is performed in a proper manner;

- ensuring that the guarantees of practicing law are observed;
- ensuring that the professional rights of attorneys are protected;
- ensuring that attorneys are highly professional;
- ensuring that the issues of attorneys' disciplinary liability are settled in Ukraine (Part 3 of Article 3 of Law No. 5076).

This report aims to evaluate how effectively the principles of organization and operation of the bar have been regulated at the legislative level in 2012–2018 as well as how effectively the bar is self-governed, and to identify and eliminate potential gaps and shortcomings in the regulation and organization of the bar.

The report consists of the introduction, five sections, the conclusions, and the references.

While preparing the report, basic international documents defining the standards of organization and operation of the bar were used, so were the Constitution of Ukraine, the Law of Ukraine «On the High Council of Justice», the Law of Ukraine «On the Bar and Practice of Law», the charters of the UNBA and the PACE, the UNBA annual reports for 2016 and 2017, the UNBA Report «The Five-Year Success of the Bar of Ukraine», the BCU and HQDBC reports for 2012–2017, the CCBE and ICJ mission reports for 2013–2014, the Report on the Needs Assessment Conducted in Respect of the Self-Governance of Lawyers in Ukraine as part of the Consolidating Ukraine's Justice Sector Reform Project, implemented by the Council of Europe in 2017–2018 [93], and other open-source documents and data.

1. ROLE OF THE BAR IN A DEMOCRATIC SOCIETY

The basic documents defining the international standards of organization and operation of the bar are as follows:

- the United Nations Basic Principles on the Role of Lawyers;
- the Draft Universal Declaration on the Independence of Justice (the Singhvi Declaration);
- Recommendation No. R (2000) 21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer;
- the CCBE Charter of Core Principles of the European Legal Profession;
- the CCBE Code of Conduct for European Lawyers.

The preamble to the United Nations Basic Principles on the Role of Lawyers states that adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession [15]

The United Nations Basic Principles on the Role of Lawyers establish minimum basic standards to be respected by all branches of government to ensure the independence and integrity of the legal profession. They recognize that attorneys as essential agents of the administration of justice are required, together with judges and prosecutors, to ensure and uphold the rule of law in furthering the ends of justice and the public interest.

In the performance of their duties, attorneys should be able to act freely, diligently and fearlessly at all times in accordance with the established rules, standards and ethics of the profession and they shall not suffer any pressure on the part of government or the public [16].

Attorneys, like other people, have the right to freedom of association recognized in the Universal Declaration of Human Rights [20] and guaranteed by the International Covenant on Civil and Political Rights [22] and the ECHR [21], which have been ratified by Ukraine. This right

includes the right to set up and support independent self-governing professional associations. There shall be established in each jurisdiction one or more independent self-governing associations of attorneys recognized in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person [16]. Such professional associations have a vital role to uphold professional standards and ethics, to protect their members from improper restrictions and infringements, to provide legal services to all in need of them, and to cooperate with governmental and other institutions in furthering the ends of justice and the public interest [15].

Self-governing associations of attorneys are necessary to represent their interests, promote their continuing education and training and maintain their professional level; they shall cooperate with governments to make sure that everyone has equal and effective access to legal services so that attorneys are able to exercise their functions, without improper interference, to give advice and help their clients in accordance with the law and recognized professional standards and ethics [15].

A culture of respect for the independence of the legal profession and for its essential role in the administration of justice and the maintenance of the rule of law needs to be supported by self-governing associations of attorneys with open and democratic structures of governance and decision making, which safeguard against manipulation by the executive or other powerful interests.

Recommendation No. R (2000) 21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of attorney also states the need to create opportunities and encourage attorneys to form and join professional local, national and international associations, which have the task of strengthening professional standards and safeguarding the independence and interests of attorneys [17].

In addition, bar associations or other professional lawyers' associations should be self-governing

bodies, independent of the authorities and civil society organizations.

The role of bar associations or other professional lawyers' associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected; they should be encouraged and their independence should be ensured, including but not limited to:

- promoting and upholding the cause of justice without fear;
- defending the role of attorneys in society and, in particular, maintaining their honor, dignity, and integrity;
- promoting the highest possible standards of competence of attorneys and maintaining attorneys' respect for the standards of conduct and discipline [17].

The CCBE Charter of Core Principles of the European Legal Profession provides a list of ten core principles regulating the legal profession in the EU, which, in particular, include:

- a) the attorney's independence and freedom to pursue the client's case;
- b) the attorney's right and duty to keep the client's matters confidential and to respect professional secrecy;
- c) the avoidance of conflicts of interest, whether between different clients or between the client and the attorney;
- d) dignity and honor of the legal profession, and the integrity and good repute of the individual attorney;
- e) loyalty to the client;
- f) fair treatment of clients in relation to fees;
- g) the attorney's professional competence;
- h) respect towards professional colleagues;
- i) respect for the rule of law and the administration of justice in a fair manner;
- j) the self-regulation of the legal profession [18]

The official commentary to the Charter states that it is

one of the hallmarks of weak societies that the state, either overtly or covertly, controls the legal profession and the activities of attorneys [18].

Most European legal professions display a combination of state regulation and self-regulation.

In many cases the state, recognizing the importance of the core principles, uses legislation to buttress them – for instance, by giving statutory support to confidentiality, or by giving bar associations statutory power to make professional rules.

The CCBE is convinced that only a strong element of self-regulation can guarantee attorneys' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for attorneys to fulfill their professional and legal role [18].

The preamble to the Charter starts with Clause 1.1 of the CCBE Code of Conduct for Lawyers in the European Union stating that «in a society founded on respect for the rule of law the lawyer fulfills a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is his duty not only to plead his client's cause but to be his adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society» [19].

Therefore, the role of the bar in a democratic society is based on the following:

- providing legal services for the protection of human rights and fundamental freedoms;
- furthering the ends of justice and the public interest in cooperation with government and other institutions.

To do so, the bar as a self-governing institution shall:

- maintain the professional standards and ethics of the legal profession;
- protect the professional rights, represent interests, undergo continuing education and professional development, and maintain a professional level of attorneys.

Therefore, the independent bar is a prerequisite for the rule of law and democracy in society.

2. UKRAINE'S INTERNATIONAL COMMITMENTS IN THE CONTEXT OF THE ORGANIZATION AND OPERATION OF THE BAR

Upon accession to the Council of Europe, Ukraine committed itself to ensuring, at the legislative level, the protection of the status of the legal profession and the establishment of a professional bar association (Sub-Clause ix of Clause 11 of PACE Opinion No. 190 (1995) on the accession of Ukraine to the Council of Europe, dated September 26, 1995 [90], Clause 10 of PACE Resolution No. 1346 (2003) «Implementation of Obligations and Commitments by Ukraine», dated September 29, 2003 [88]; Sub-Clause 7.3.6 of Clause 7.3 of PACE Resolution No. 1755 (2010) «Operation of Democratic Institutions in Ukraine», dated October 4, 2010 [89]).

As a result, at the legislative level, the bar of Ukraine was designated as a non-state self-governing body ensuring the provision of legal defense, representation and other types of legal services on the professional basis, and independently resolving issues of its organization and operation. All attorneys in Ukraine, regardless of their will, were united into the Ukrainian National Bar Association (UNBA), a non-governmental non-profit professional organization, which, in accordance with the law [7], was set up to ensure the implementation of the objectives pursued by attorneys' self-governance.

HISTORICAL BACKGROUND

DATE	EVENT	CONSEQUENCES
December 19, 1992	Adoption of the Law of Ukraine «On the Bar»	The practice of Soviet-era boards of the bar holding a monopoly in the provision of legal services was abolished
January 1, 1993	Entry into force of the Law of Ukraine «On the Bar»	
September 26, 1995	Ukraine's accession to the CoE	Ukraine committed itself to legislatively ensuring that the status of the legal profession is protected and a professional bar association is set up
June 28, 1996	Adoption of the Constitution of Ukraine	The bar of Ukraine pursues the objective to ensure the right to protection against accusation and the right to legal services in courts and other government institutions (Part 2 of Article 59)

DATE	EVENT	CONSEQUENCES
July 5, 2012	Adoption of the Law of Ukraine «On the Bar and Practice of Law»	The bar of Ukraine was constituted as a non-governmental self-governing institution
August 15, 2012	Entry into force of the Law of Ukraine «On the Bar and Practice of Law»	
November 20, 2012	Entry into force of the new CCoP	It shall only be the attorney who may act as a defense counsel in criminal proceedings
November 19, 2012	Registration of the UNBA	A non-governmental professional association uniting all attorneys of Ukraine began operating
June 2, 2016	Amendment of the Constitution of Ukraine (with regard to justice)	The practice of attorneys holding a monopoly in the representation of entities in court was implemented
September 30, 2016	Entry into force of the amendments to the Constitution of Ukraine (related to justice)	
December 15, 2016	Entry into force of the amendments to the CCoP, CAP, and the CCiP	The attorney shall be the only one who may represent other entities in court unless otherwise specified by law

Therefore, following the adoption and entry into force of the Law of Ukraine «On the Bar and Practice of Law» [7], Ukraine has formally fulfilled its commitments to the Council of Europe through the registration of the UNBA and the commencement of its activities, to ensure, at the legislative level, the protection of the status of the legal profession and the establishment of a professional bar association.

3. GOALS AND OBJECTIVES OF THE PUBLIC POLICY OF REGULATING THE BAR AND PRACTICE OF LAW IN UKRAINE

The public policy of regulating the bar and practice of law is implemented through the Constitution of Ukraine, the Law of Ukraine «On the Bar and Practice of Law», other laws of Ukraine, strategic public policy documents and codes of procedure.

THE BAR OF UKRAINE

41 873
ATTORNEYS*



UNBA (LE) – A BUDGET OF

UAH **19 078 529**
(2017)



THE CONGRESS OF ATTORNEYS OF UKRAINE SHALL ELECT (APPOINT):

- ✓ two HCJ members (Articles 5 and 11 of the Law of Ukraine «On the High Council of Justice»)
- ✓ two HQCJU members (Clause 3 of Part 2 of Article 94 and Part 16 of Article 95 of the Law of Ukraine «On the Structure of Courts and the Status of Judges»)
- ✓ one QDCPP member (Clause 3 of Part 1 of Article 74 of the Law of Ukraine «On the Office of Public Prosecutor»).

BCU HQDBC (LE) HACB 27 RBCS (LE):

- ✓ shall designate representatives of the bar to the committee for selection of FSLA attorneys; (Clause 6 of Part 4 of Article 48 of Law No. 5076);
- ✓ shall designate representatives of the bar to the committee for selection of FSLA attorneys; (Clause 6 of Part 4 of Article 48 of Law No. 5076);

27 QDCBS (LE)
27 RACBS

Total: 56 LEs

Figure 1.

Number of Attorneys Entered in the URAU, pers.

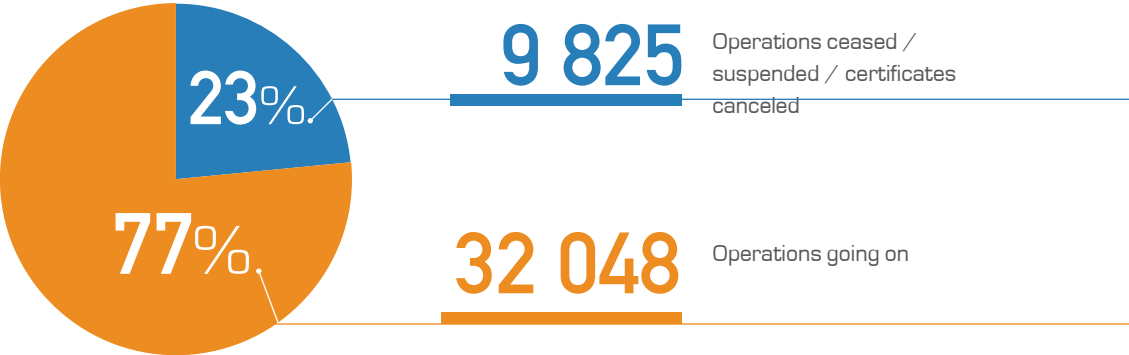
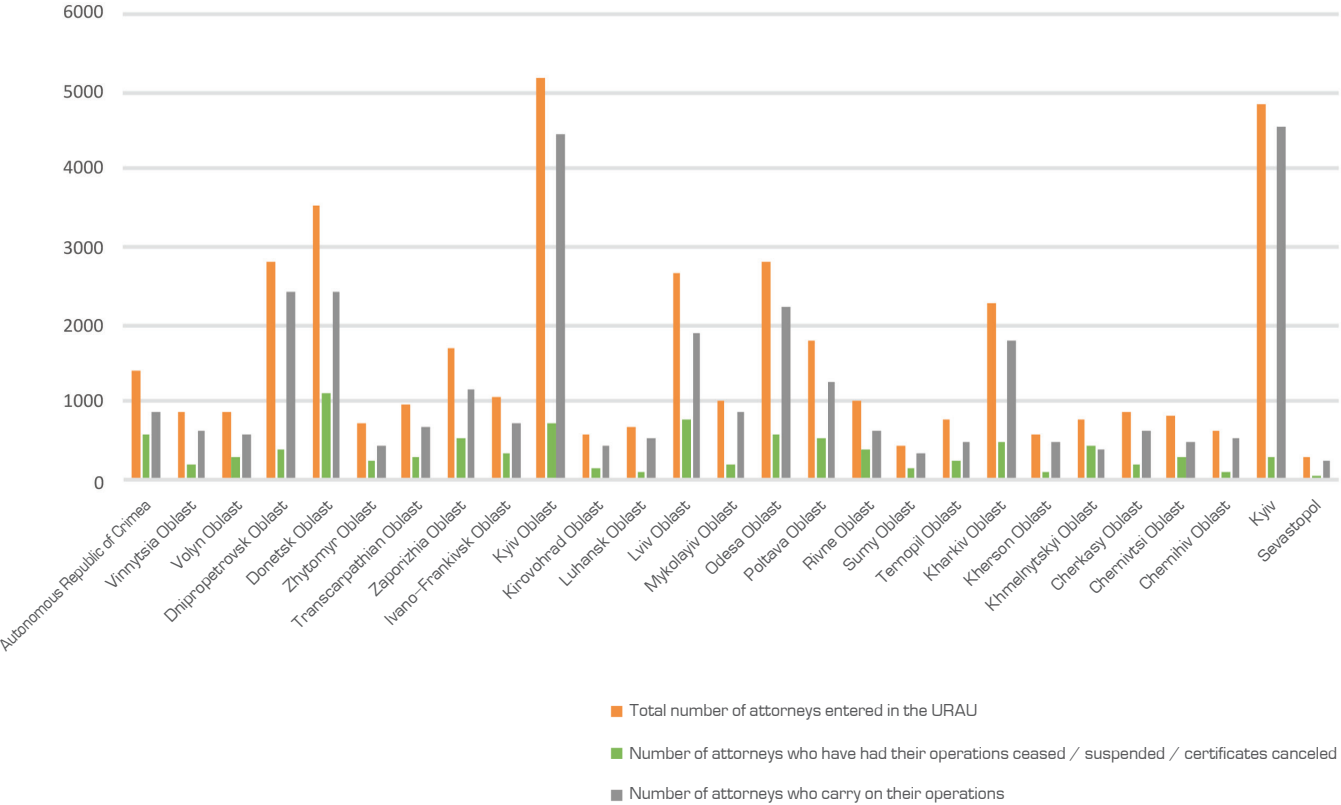


Figure 2.

Total Number of Attorneys Entered in the URAU by Regions, pers.



3.1. CONSTITUTION OF UKRAINE (THE ONE EFFECTIVE UNTIL SEPTEMBER 30, 2016)

Before September 30, 2016, the constitutional status and objectives of the bar in Ukraine were determined, first of all, by Article 59 providing that:

- every person shall have the right to legal services;
- such assistance is granted free of charge in the cases prescribed by law;
- every person is free to select a defense counsel to protect his or her rights (Part 1 of Article 59).

In Ukraine, the bar pursued the following objectives:

- to ensure the right to protection against accusation;
- to provide legal services when deciding matters before a court and in other government agencies (Part 2 of Article 59).

The right of arrested or detained persons to use the legal services of a defense counsel was also provided for (Part 4 of Article 29). The basic framework of organization and operation of the bar was determined solely by the laws of Ukraine (Sub-clause 14 of Article 92). The Congress of Lawyers appointed three HCJ members (Part 2 of Article 131).

The right to choose a defense counsel of his or her rights freely and the right to legal services were the subject of interpretation by the Constitutional Court of Ukraine in cases concerning the right to choose a defense counsel freely according to the constitutional appeal filed by Hennadii I. Soldatov [68] and the right to legal services according to the constitutional appeal filed by Ihor V. Holovan [67].

3.2. LAW OF UKRAINE «ON THE BAR AND PRACTICE OF LAW»

On August 15, 2012, Law No. 5076 came into force. The principal amendments thereto are as follows:

- the terms «attorney», «practice of law», «attorneys' self-governance», «legal services agreement», and «legal defense» were defined;
- so were the terms «other types of legal services», «client», «conflict of interest»;
- the bar was defined as a public self-governing institution ensuring the provision of legal services on a professional basis and independently resolving issues of its organization and operation;
- the requirements for persons who intend to practice law were tightened;
- the regulation of the procedure for acquiring the right to practice law was set out in a more precise manner;
- practicing law was classified as independent professional activities;
- the attorney who practices law on an individual basis was defined as a self-employed person;
- the attorney's right to file a request and liability for not responding thereto became regulated;
- the role of the professional conduct rules of the bar was strengthened;
- the system of self-governing bodies of attorneys was introduced;
- the UNBA was set up as a non-governmental non-profit professional organization that unites all of the attorneys of Ukraine;
- the bar was made independent from government and local self-government authorities as well as their officials and officers;

- the specific features of the status of a foreign state attorney who may practice law in Ukraine were determined;
- the URAU was established.

Therefore, Law No. 5076 enabled the following:

- ensuring that the international obligations of Ukraine which are related to securing the protection of the status of the legal profession at the legislative level are fulfilled and a professional association of attorneys is set up;
- establishing an integral system of attorneys' self-governance in Ukraine;
- substantially expanding and improving the principles of organization and operation of the bar.

- an imperfect system of formation of the bodies of attorneys' self-governance and their interaction, the guarantees of independence and proper performance of their functions; an insufficient level of professional training of attorneys;
- the inefficiency of disciplinary control and ethical standards in the practice of law;
- the imperfection of budget and financial management in the system of attorneys' self-governance [12].

One of the areas of reforming the court structure and procedure as well as those of related institutions of law is to strengthen the guarantees of practicing law, which, in particular, includes:

- in the immediate future, defining the types of legal services that may only be provided by an attorney, which will improve the quality of legal services and the quality of justice in general, without prejudice to the trial participants' rights to access to justice;
- at the institutional level, strengthening the UNBA for ensuring proper professional activities of the bar, management of legal professions and representation of collective interests of attorneys;
- ensuring the balance of powers of the SGBA, including the QDCB, improving the accountability system of the SGBA, and tightening the responsibility of their members;
- tightening the requirements for practicing law, in particular, strengthening the professional and moral and ethical requirements for persons who intend to obtain the status of an attorney, and the disciplinary control of the profession; clarifying the grounds for holding an attorney liable in terms of disciplinary action, improving the rules of disciplinary proceedings with regard to an attorney, and differentiating the types of penalties that can be applied to an attorney;
- improving the procedures for taking the qualification exam and taking an internship, and refining the assistant attorney institution;
- improving the procedure for continuing professional

3.3. STRATEGIC PUBLIC POLICY DOCUMENTS

The current status of the institutional structure of the bar in society is not satisfactory and needs development and improvement. This is defined in two strategic documents adopted in Ukraine during last several years: the 2015–2020 Strategy for Reforming the Court Structure and Procedure as Well as Those of Related Institutions of Law, approved by Decree No. 276/2015 of the President of Ukraine on May 20, 2015 [12], and the National Human Rights Strategy of Ukraine, approved by Decree No. 501/2015 of the President of Ukraine on August 25, 2015, [13].

The existing systems for the provision of legal services have also demonstrated the lack of functional capacity, and in particular:

- the inconsistency of the formal status of an attorney with the actual conditions for the practice of law, including the imperfection of the practical provision of the attorney's rights and guarantees of practicing law;

development of attorneys;

- improving the legal regulation of the professional rights and duties of attorneys, the guarantees of practicing law; introducing effective mechanisms for bringing the officials to account for violating the guarantees of the independence of attorneys; strengthening the guarantees of protecting the attorney-client privilege;
- improving social and economic, financial and operational conditions for the implementation of legal activities through the introduction of the system of insurance of professional civil liability of attorneys, as well as granting attorneys the right to apply a simplified system of taxation, accounting and reporting;
- strengthening the management of information systems for greater engagement of attorneys in the provision of e-justice services» [12].

Providing guarantees for the professional activity of attorneys is also allowed for by the National Human Rights Strategy.

In particular, Sub-Clause 23 of the Action Plan for the Implementation of the National Human Rights Strategy to 2020, approved by Resolution No. 1393-r of the Cabinet of Ministers of Ukraine on November 23, 2015, provides for monitoring the efficiency of taxation of income from the practice of law and developing appropriate recommendations for the reduction of taxable income from the practice of law to cut the cost of attorneys' services [30].

Therefore:

- the current status of the institutional structure of the bar in society is not satisfactory and needs development and improvement;
- attorneys are a constituent element of the justice system (a related institution of law);
- reforming the bar is part of the judicial reform and human rights strategy, which cannot be effectively implemented without the bar being successfully reformed.

3.4. CONSTITUTION OF UKRAINE (AMENDMENTS RELATED TO JUSTICE)

Under the Law of Ukraine «On Amendments to the Constitution (in relation to justice)» No. 1401-VIII dated June 2, 2016, the norms concerning the bar have undergone significant changes:

1. In Part 4 of Article 29, the term «legal services» has been replaced with the term «lawyer's services», in Part 4 of Article 55, the term «legal defense» has been replaced with the term «juridical defense», and in Part 1 of Article 59, the term «legal services» has been amended to be replaced with the term «professional lawyer's services».
2. Part 2 of Article 59 has been deleted, and the main provisions defining the constitutional status and objectives of the bar have been moved to Constitution Chapter VIII «Justice» from Constitution Chapter II «Rights, Freedoms and Responsibilities of a Person and a Citizen».
3. In Sub-Clause 14 of Article 92, the term «the basis of organization and operation of the bar» has been replaced with the term «principles of organization and operation of the bar».
4. Part 2 of Article 131 has been amended to read, «The High Council of Justice consists of twenty-one members, of whom ... two shall be elected by the Congress of Attorneys of Ukraine, ...» (Part 2 of Article 131).

Chapter VIII «Justice» has been amended to add Article 131-2 as follows:

«The bar is established in Ukraine to provide professional lawyer's aid.

The independence of the bar shall be guaranteed.

The principles of organization and operation of the bar and the practice of law in Ukraine shall be defined by law.

It is the attorney who may solely represent any entity in court and conduct defense against criminal charges.

Exceptions to representation in court in labor disputes, disputes related to the protection of social rights, elections and referendums, minor disputes as well as representation of minors or non-adults and persons recognized as incapacitated by the court or whose capacity is restricted may be provided for by law.»

Chapter XV «Transitional Provisions» has been amended to add the provisions as follows: *«representation in accordance with Sub-Clause 3 of Part 1 of Article 1311 and Article 1312 of the Constitution exclusively by prosecutors or attorneys in the Supreme Court and courts of cassation shall be exercised starting January 1, 2017; in courts of appeal – starting January 1, 2018; and in courts of first instance – starting January 1, 2019.*

Representation of government and local self-government bodies in courts exclusively by prosecutors or attorneys shall be exercised starting January 1, 2020.

Representation in court in proceedings started before the entry into force of the Law of Ukraine «On Amendments to the Constitution of Ukraine (in relation to justice)» is exercised in accordance with the rules that were in force prior to its entry into force – until the adoption of final court decisions that are not subject to appeal in relevant cases»[1].

Such amendments, obviously, are intended to ensure the institutional and value-based unity of the legal community and increase the professional and ethical standards of the legal profession and the quality of legal services (professional lawyer's services). However, according to authors, along with the potential for progressive influence, they are subject to certain risks that should be taken into account in the further development and implementation of the legislation:

- the legislature completely refused to use the established constitutional term «legal services», which, on more than one occasion, was the subject of the interpretation of the Constitutional Court of Ukraine (the CCoU) (decisions in cases on the right to choose an attorney on November 16, 2000 [69] and on the right to legal services on September 30, 2009 [68]), in favor of the undetermined and unusual term «professional lawyer's aid». Therefore, the content and amount of the previously guaranteed constitu-

tional right of everyone to legal services, i.e. services in terms of law, was narrowed to everyone's right to professional lawyer's services, i.e. services provided by a professional lawyer;

- it has become more difficult for citizens and legal entities to access legal services and justice, in particular due to the narrowing of the right of everyone to choose an attorney to protect his or her rights from among persons who are not attorneys, and the probable increase in the cost of legal services (professional lawyer's services);
- the capacity of legal entities to exercise procedural rights independently through the representation in courts by their regular legal advisors is canceled, and instead, the contractual representation of attorneys is imposed on them;
- corruption risks increase significantly when accessing the profession of attorney due to the increased desire to gain an attorney status among a large number of lawyers;
- legal advisors, workers of the legal services of government and local self-government bodies (their employers) are burdened with the need to spend much time and money on gaining an attorney status and subsequently maintaining it (qualification exams, ensuring attorney's self-governance through the payment of annual fees, professional development, etc.), even with no intention of practicing law in the future. In addition, such an approach makes a significant number of public servants and local self-government officials dependent upon the UNBA and the SGBA, which may have a negative impact on the quality of state governance.

CONSTITUTION OF UKRAINE AS AMENDED BY THE LAW OF UKRAINE «ON AMENDMENTS TO THE CONSTITUTION OF UKRAINE (IN RELATION TO JUSTICE)»

Every arrested or detained person shall be immediately notified about the cause of the arrest or detention, explained his or her rights, and given the opportunity to defend himself or herself personally and use the lawyer's aid provided by the defense counsel (Part 4 of Article 29) once he or she is arrested or detained.

After exhausting all national means of juridical defense, every person may apply to relevant international court institutions or relevant bodies of international organizations a member of which Ukraine is (Part 4 of Article 55) to have his or her rights and freedoms defended.

Every person has the right to professional lawyer's aid. Such aid shall be provided free of charge unless otherwise provided by law. Every person shall be free to choose the one who will defend his or her rights (Part 4 of Article 50).

Defined solely by laws of Ukraine shall be ... 14) ... the principles of organization and operation of the bar (Clause 14 of Article 92).

The High Council of Justice consists of twenty-one members, of whom ... two shall be elected by the Congress of Attorneys of Ukraine, ... (Part 2 of Article 131).
Article 131–2.

The bar is established in Ukraine to provide professional lawyer's aid. The independence of the bar shall be guaranteed.

The principles of organization and operation of the bar and the practice of law in Ukraine shall be defined by law.

It is the attorney who may solely represent any entity in court and conduct defense against criminal charges.

Exceptions to representation in court in labor disputes, disputes related to the protection of social rights, elections and referendums, minor disputes as well as representation of minors or non-adults and persons recognized as incapacitated by the court or whose capacity is restricted may be provided for by law (Article 1312).

...11) representation in accordance with Sub-Clause 3 of Part 1 of Article 1311 and Article 1312 of the Constitution exclusively by prosecutors or attorneys in the Supreme Court and courts of cassation shall be exercised starting January 1, 2017; in courts of appeal – starting January 1, 2018; and in courts of first instance – starting January 1, 2019.

Representation of government and local self-government bodies in courts exclusively by prosecutors or attorneys shall be exercised starting January 1, 2020.

Representation in court in proceedings started before the entry into force of the Law of Ukraine «On Amendments to the Constitution of Ukraine (in relation to justice)» shall be exercised in accordance with the rules that were in force prior to its entry into force – until the adoption of final court decisions that are not subject to appeal in relevant cases (Sub-Clause 11 of Clause 16 of Chapter XVI «Transitional Provisions»).

Therefore, in accordance with the amendments made to the Constitution of Ukraine in relation to justice:

- the bar shall be a constituent part of the justice system in Ukraine;
- the principles of organization and operation of the bar and practice of law shall be defined by law;
- the bar shall pursue the goal of providing professional lawyer's aid;
- attorneys shall be the only body who may represent another entity in court and defend such entity against criminal charges;
- exceptions to representation in court in labor disputes, disputes related to the protection of social rights, elections and referendums, minor disputes as well as representation of minors or non-adults and persons recognized as incapacitated by the court or whose capacity is restricted may be provided for by law;
- attorneys shall be vested with the exclusive right to represent other entities in courts of cassation, appeal, or first instance starting January 1, 2017 until January 1, 2019;
- representation of government and local self-government bodies in courts exclusively by prosecutors or attorneys shall be exercised starting January 1, 2020;
- representation in court in proceedings started before September 30, 2016 shall be exercised in accordance with the rules that were in force before September 30, 2016 – until the adoption of final court decisions that are not subject to appeal in relevant cases.

3.5. CCRP AND THE NEW CODES OF PROCEDURE

Under Part 1 of Article 45 of the CCrP that was adopted on April 13, 2012 and came into force on November 20, 2012 [2], a defense counsel is an attorney who is in charge of defending the following entities:

- the suspected;
- the accused;
- the convicted;
- the acquitted;
- the person who is to be subjected to compulsory medical or correctional measures, or regarding whom the matter of application of the same has been considered;
- the person whose surrender (extradition) to a foreign state is to be considered.

In criminal proceedings, an attorney also:

- represents: an aggrieved party, a civil plaintiff, a civil defendant (exclusive of legal entities) (Article 58 and 63 of the CCrP);
- may represent a legal entity subject to a proceeding being underway, or a third party subject to a property attachment being considered (Article 64-1, 6-1 and 64-2);
- provides legal services to a witness during testimony and participation in other procedural activities (Clause 2 of Part 1 of Article 66 of the CCrP) [2].

Under Part 1 of Article 271 of the CUAO of Ukraine [5], an attorney or another law specialist who may provide legal services in person or as ordered by a legal entity may participate in the hearing of an administrative offense.

Under Part 1 of Article of the CCoP of Ukraine [3], Part 1 of Article 57 of the CAP of Ukraine, and Part 1 of Article 60 of the CCiP of Ukraine, an attorney or a legal representative (exclusive of minor disputes) may serve as a representative in court.

Therefore, the CCrP, CUAO, CCoP, CAP, and the CCiP stipulate as follows:

- attorneys hold the monopoly on providing defense services to the suspect, accused, convicted, acquitted, the person who is to be subjected to compulsory medical or correctional measures, or regarding whom the matter of application of the same was considered, and the person whose surrender (extradition) to a foreign state is to be considered, and providing legal services to the witness in criminal proceedings;
- Attorneys hold a partial monopoly on representation in administrative, economic offenses, criminal and civil legal proceedings.

According to the Effective Application and the Modernization of the CCrP in the Light of the Principle of Competition and the Right to Defense Report drafted by the UBA and funded by the CoE Continued Support to the Criminal Justice Reform in Ukraine Project in 2017–2018, the application of the existing CCrP of Ukraine in terms of the principle of competition and the right to defense needs further improvement and modernization [19].

Such an improvement, according to authors, could be possible to make by way of:

- defining the term «defense counsel» among the key terms defined in Article 3 of the CCrP, along with the terms «public prosecutor», «investigator», «head of the pre-trial investigation body», «head of the public prosecutor's office», «judge», «investigating judge», etc;
- strengthening the procedural rights of the defense team by:
 - expanding the rights of the suspect and the accused in Article 42 and 43 of the CCrP by providing them with the right to protect their rights, freedoms and interests against violations and illegal encroachments (as stipulated in Article 55 of the Constitution of Ukraine) using any remedy not prohibited by the CCrP, and the right to engage an unlimited number of defense counsels;
 - improving the mechanism for engaging a defense counsel for a separate procedural action to prevent any wrongdoing in respect of the procedure on the part of the defense team (Article 53 of the CCrP);
 - providing the defense team with the right to ask the expert questions for investigation during the formal expert examination if such an expert is engaged by the prosecution team (Part 1 of Article 243 of the CCrP);
 - making it mandatory for a defense counsel to be engaged when an agreement is entered into with regard to conciliation, which shall commence with the date of initiation thereof, and making it mandatory for a defense counsel to participate in a court proceeding when an agreement on the recognition of guilt is considered (Article 52 of the CCrP);
- expanding the powers of the defense counsel by:
 - determining the date on which an attorney acquired the procedural status of the defense counsel (Part 1 of Article 45 of the CCrP)
 - pointing out that impeding, in any form, access to the lawful activity of the defense counsel or infringing the statutory guarantees of their professional activity and professional secrecy entails legal liability established by law;
 - identifying the detailed procedural rights of the defense counsel in addition to the procedural rights of the suspect taking into account the rights of the defense counsel provided for in Article 20 of Law No. 5076;
 - enhancing the opportunities of the defense counsel for the latter to be able to gather evidence by initiating investigative activities and other procedural actions, including covert investigative (search) activities, in the presence of the investigating judge and providing the defense coun-

sel with the right to interview an accused party, a suspect, witness, victim, civil plaintiff, civil defendant, expert upon their consent, to draw up an interrogation report, to demand government authorities, local self-government authorities, enterprises, institutions, organizations, officials and individuals (upon their consent) to present objects and documents that can be used for examination, to draw up an examination report and to receive expert opinions;

- ensuring the right of the defense counsel, without prior permission from an investigating officer, public prosecutor, investigating judge, court, or other authorized official, to use any technical means not prohibited by law, including during meetings with the suspect, the accused and for copying the case materials;
- ensuring the right of the defense counsel to free access to the person being defended whenever and wherever he or she is;
- ensuring the right of the defense counsel to participate in any investigative activities in which the person being defended takes part or which are conducted in relation to the person being defended regardless of the stage of their conduct;
- ensuring the procedural independence of the defense counsel in a manner similar to the procedural independence of the public prosecutor (Part 1 of Article 36 of the CCrP) and the investigating officer (Part 5 of Article 40 of the CCrP) and the prohibition of interference with his or her activity or obstruction of his or her activity in any way;
- ensuring the procedural rights of the attorney who provides legal services to the witness;
- ensuring the legal status and procedural rights of the assistant attorney;
- strengthening the procedural rights of the legal representative of the victim, the civil plaintiff, the civil defendant, the legal entity in respect of whom the proceedings are conducted, the person with respect to whose property the matter of attachment of property is considered (Part 5 of Article 45, Part 4 of Article 58, Part 4 of Article 63, Part 6 of Article 64–1 of the CCrP) with respect to the rights of the attorney stipulated by Law No. 5076;
- determining the letter of engagement or the warrant of attorney issued by an FSLA center to be the only document that confirms the authority of any attorney (Part 1 of Article 50 of the CCrP);
- strengthening the guarantees of practicing law in criminal proceedings, in particular, by way of:
 - establishing a special jurisdiction of criminal proceedings against the attorneys of the State Bureau of Investigations (the SBI);
 - establishing a special procedure for interrogation and seizure in the premises where the attorney conducts professional activities, which makes it impossible to disclose the client–attorney privilege (taking into account the best practices of the ECtHR);
 - identifying the procedural rights of the representative of the RBC in the criminal proceedings;
 - attributing any other objects and documents containing information that is the client–attorney privilege, including electronic media, to objects and documents access to which is prohibited (Article 161 of the CCrP).

4. IDENTIFYING CHALLENGES

4.1. FORMING THE SGBA AT THE NATIONAL LEVEL

Under Sub-Clause 1 and Sub-Clause 10 of Clause 5 of Section X «Transitional Provisions» of Law No. 5076:

- the regional constituent conferences of attorneys shall be held not later than 60 days starting with the date of entry into force of this law in the Autonomous Republic of Crimea, oblasts as well as the cities of Kyiv and Sevastopol;
- the Constituent Congress of Attorneys of Ukraine shall be held not later than 100 days starting with the date of entry into force of this law and the delegates elected at the regional constituent conferences of attorneys shall attend it.

Under Sub-Clause 3 and Sub-Clause 11, the responsibility to provide organizational and technical support shall be as follows:

- for the holding of the regional constituent conferences of attorneys such responsibility shall rest with the QDCBs for the Autonomous Republic of Crimea, oblasts as well as the cities of Kyiv and Sevastopol, which had been established before this law came into force;
- for the holding of the Constituent Congress of Attorneys of Ukraine such responsibility shall rest with the HQCB at the CMU.

Under Sub-Clause 7 of Clause 5 of Section X «Transitional Provisions» of Law No. 5076 [7], a regional constituent conference of attorneys shall:

- set the number of the RBC members and elect such members as well as the head of the RBC;
- elect delegates to the Constituent Congress of Attorneys of Ukraine based on the quota of one delegate per 100 attorneys who have obtained a certificate of the right to practice law upon the decision of

the QDCB of the relevant region established prior to the date on which this law entered into force, provided that at least five delegates per region are elected;

- elect a representative of attorneys of the region to the BCU;
- elect a representative of attorneys of the region to the HQDBC;
- elect the head and the members of the QDCB;
- set the number of the RACB members and elect such members as well as the head of the RACB.

According to Sub-Clause 2 of Clause 5 of Section X «Transitional Provisions» of Law No. 5076 [7], attorneys who have obtained a certificate of the right to practice law upon the decision of the QDCB of the relevant region established prior to the date on which this law entered into force shall attend the regional constituent conferences of attorneys.

However, contrary to Sub-Clause 2 of Clause 5 of Section X «Transitional Provisions» of Law No. 5076 [7], in several oblasts (Transcarpathian, Donetsk, Kyiv, and Kharkiv oblasts), the regional QDCBs established quotas for participation in the regional constituent conferences of attorneys to make it impossible for part of the attorneys to attend the conference. In Transcarpathian Oblast and Kharkiv Oblast, the attorneys who were not allowed to participate in the regional constituent conferences of attorneys held «alternative» conferences, at which delegates were also elected to participate in the Constituent Congress of Attorneys of Ukraine.

In pursuance of Sub-Clauses 10 and 15 of Clause 5 of Section X «Transitional Provisions» of Law No. 5076 and in accordance with September 11, 2012 Decision No. VI / 18-897 of the HQCB at the CMU [47], on November 17, 2012, at Hotel Rus on 4, Hospitalna vul., in Kyiv, the Constituent Congress of Attorneys of Ukraine was held.

Since part of the delegates to the congress who were elected at the regional constituent conferences of at-

torneys, including head of the HQCB at the CMU, the maintenance staff of the HQCB at the CMU, the registration group and those in attendance, in particular, the CCBE representative, were not allowed to participate in the constituent congress, they moved to Kinopanorama Movie Theater on 19, Shota Rustaveli vul. in Kyiv, where a parallel Constituent Congress of Attorneys of Ukraine was held [50; 105; 106; 107].

Both of the constituent congresses:

- set up the UNBA and approved its Charter;
- endorsed the terms of reference on the BCU, HQDBC, and the HACB;
- elected:
 - the head of the BCU, UNBA and two deputy heads;
 - the head of the HQDBC and two deputy heads;
 - the head and the members of the HACB;
- endorsed the PCRB.

In addition, the Constituent Congress of Attorneys held at Hotel Rus terminated the powers of a member of the HCJ, Volodymyr Vysotskyi, former head of the HQCB at the CMU, and appointed Ihor Temkizhev, head of the HQCB, member of the Supreme Administrative Court of Ukraine (SACU).

In pursuance of the decision of the Kyiv SGBA dated April 15, 2013 [73], the Constituent Congress of Attorneys of Ukraine held at Hotel Rus in Kyiv on November 17, 2012 was recognized as one that was conducted within the limits of authority and in the way provided for by law, and the decisions taken therein were recognized as those that are binding for all attorneys and that came into force on the date of adoption, i.e. they are legal.

At the same time, the minutes of the Constituent Congress of Attorneys of Ukraine that took place at Hotel Rus on November 17, 2012 have never been made public.

Part of the attorneys elected to the BCU and the HQDBC from the regions whose delegations did not participate in the Constituent Congress of Attorneys of Ukraine held at Hotel Rus on November 17, 2012 are known to have been refusing to participate in the work of such bodies for a long time since they did not recognize the legitimacy of the bodies. Therefore, the meetings of the BCU and

HQDBC could not be competent management bodies due to the lack of a quorum. Administrative appeals were filed against the BCU and HQDBC with a request to declare their inaction illegal and oblige them to take certain actions against the attorneys who are members of the BCU and the HQDBC and who do not participate in the work of such bodies. For more information, please see the Article «Quorum for Holding ...» [108].

The developments related to holding the Constituent Congress of Attorneys were the subject of examination of international experts, whose findings are provided in the report on the results of the visit of the CCBE delegation to check the facts that took place on July 10–12, 2013 [86; 87], as well as the report of the International Commission of Jurists on the results of the visit on June 20 through June 22, 2014 [85].

The conclusions of international experts show that the formation of self-governing bodies of attorneys at the regional level (in some oblasts) and at the national level during the Constituent Congress of Attorneys of Ukraine was not always carried out in a democratic way, the process was accompanied by conflicts and violations of attorneys' right to participate in self-governing bodies of attorneys as provided by law, which, in the opinion of international experts, discredits the legitimacy of the established system of self-governing bodies of attorneys.

4.2. REGULATORY ACTIVITY OF THE SGBA AT THE NATIONAL LEVEL

The national SGBA performs regulation through the adoption of decisions of the Congress of Attorneys of Ukraine and the BCU.

Over the period from August 2012 until August 2018, four congresses of attorneys of Ukraine were conducted. Those were as follows:

1. Constituent Congress of Attorneys of Ukraine – November 17, 2012
2. Extraordinary Congress of Attorneys of Ukraine – April 26–27, 2014
3. Third Congress of Attorneys of Ukraine (four stages) – November 20, 2014, April 24–25, 2015, June

12, 2015, and July 3, 2015 (the congress lasted nearly eight months)

4. General Congress of Attorneys of Ukraine – June 9, 2017.

The Extraordinary Congress of Attorneys of Ukraine held on April 26–27, 2014. The following regulatory decisions were adopted in the course of the Extraordinary Congress of Attorneys of Ukraine: on adoption of amendments to the UNBA Charter, on adoption of amendments to the BCU Terms of Reference, on adoption of amendments to the HQDBC Terms of Reference, on adoption of amendments to the HACB Terms of Reference, on increase of the number of HACB members, and on approval of the payment of remuneration to HACB members.

The Third Congress of Attorneys of Ukraine comprised the following:

1st stage – November 20, 2014

2nd stage – April 24–25, 2015

3rd stage – June 12, 2015

4th stage – July 3, 2015

The following regulatory decisions were adopted in the course of the Third Congress of Attorneys of Ukraine (four stages): on amendments to the HACB Terms of Reference, on delimitation of the jurisdictions of self-governing bodies of attorneys of the city of Kyiv and Kyiv Oblast, on attorneys' liability for failure to fulfill decisions of their self-governing bodies regarding the non-payment of annual attorney fees for ensuring the implementation of attorneys' self-governance, and on adoption of amendments to the UNBA Charter.

The General Congress of Attorneys of Ukraine held on June 9, 2017. The following regulatory decisions were adopted in the course of the General Congress of Attorneys of Ukraine: on amendments to the UNBA Charter as well as the BCU and HQDBC Terms of Reference, and on amendments to the PCRB [23].

According to the information available from open sources, there have been numerous violations committed while conducting Ukrainian attorney congresses and adopting decisions thereat, including but not limited to the following:

- on prohibiting certain delegates and entire delegations from attending said congresses;
- on co-opting rather than electing delegates at regional conferences of attorneys;
- on adopting decisions not being on the agenda;
- on adopting decisions despite the lack of the quorum set forth by law.

More information about the congresses of attorneys of Ukraine is provided below: [110; 111; 112; 113].

The 2012–2017 BCU Report [83] and the 2017 UNBA Report [80] show that the BCU adopted 1,220 decisions, most of which being regulatory, as of the end of 2017. Those included the following decisions:

- on approval of clarifications related to practicing law;
- on approval of regulations (amending them);
- on organization of the SGBA activities;
- on adoption of the procedure for nominating and electing delegates to regional conferences of attorneys and the rules of procedure thereof, and setting representation quotas;
- on adoption of the Terms of Reference of Self-Governing Bodies of Attorneys (amendments thereto);
- on consideration of appeals against decisions, actions or omissions on the part of a number of regional attorneys and their heads, and on revocation of RBC decisions.

A list of key BCU decisions is provided in the 2012–2017 BCU Report.

Authors believe that very many BCU decisions directly contradict Law No. 5074 and/or were adopted in abuse of the power limits set. All of them need to be thoroughly analyzed for compliance with the Constitution and the laws of Ukraine and for violation of human rights, the rights of attorneys and the guarantees of practicing law.

SOME OF THE DECISIONS OF THE CONGRESS OF ATTORNEYS AND THE BCU WHICH AUTHORS CONSIDER TO BE IN CONFLICT WITH THE LAW

SGBA	Date	No.	Document Title	Essence of Violation
Constituent Congress of Attorneys of Ukraine	November 17, 2012	N/A	PCRB	It unreasonably changes the jurisdiction over disciplinary cases prescribed by law (Part 3 of Article 33 of Law No. 5016)
BCU	December 17, 2012	24	«On Adoption of the Regulation Regarding the Setting of the Amount and Procedure of Payment of Attorneys' Annual Fees for Ensuring the Implementation of Attorneys' Self-Governance»	The annual fee for ensuring the self-governance of attorneys was set to be 1 minimum wage without the BCU and HQDBC budgets being adopted by the Constituent Congress of Attorneys of Ukraine (Part 3 of Article 28 of Law No. 5076)
BCU	December 17, 2012	26	Procedure for Keeping the URAU (as amended)	It unreasonably expands the list of data subject to entering in the URAU; provides for entering the data not set forth by law (Part 2 of Article 17 of Law No. 5076); sets a fee for entering the data not set forth by law; artificially complicates access to the profession of the attorney, in particular by making it mandatory for applicants seeking the right to practice law to undergo paid education at the HSA
BCU	December 17, 2012	36	Regulation Regarding the Warrant of Attorney and the Procedure for Keeping the Register of Such Warrants	The AO and AC are stripped of the opportunity to possess warrant of attorney forms with their name being stated thereon (Part 3 of Article 14, Part 3 of Article 15 of Law No. 5076)
BCU	February 16, 2013	72	Regulation Regarding Fees to Ensure the Implementation of the Self-Governance of Attorneys (restated)	It sets grounds not stipulated by law for bringing the attorney to disciplinary liability and grounds not stipulated by law for bringing disciplinary action in the form of suspension and termination of the right to practice law (Part 2 of Article 31, Part 2 of Article 32, and Part 1 of Article 33 of Law No. 5076)

SGBA	Date	No.	Document Title	Essence of Violation
BCU	February 16, 2013	103	On Delimitation of the Jurisdictions of the QDCB and BC of the City of Kyiv and Kyiv Oblast	Contrary to the Constitution of Ukraine and the law (Part 2 of Article 17, Part 3 of Article 33, and Part 3 of Article 47 of Law No. 5076), the jurisdiction of the QDCB and BC was extended to attorneys who have obtained a certificate of the right to practice law issued by the Kyiv Oblast QDCB and who have their place of work in the city of Kyiv
BCU	June 1, 2013	156	On Setting the Amount of a One-off Fee Payable by Attorneys of Foreign States for Organizational and Technical Support	Despite not being stipulated by Law No. 5076, a one-off fee of 10 minimum wages was set for attorneys of foreign states to ensure the implementation of attorneys' self-governance by providing organizational and technical support to the QDCB and HQDBC
BCU	June 1, 2013	157	On Setting an Annual Fee Payable by Attorneys of Foreign States for Attorneys' Self-Governance	Despite not being stipulated by Law No. 5076 and despite being discriminatory by nature and amount, an annual fee of 20 minimum wages was set for attorneys of foreign states to ensure the implementation of attorneys' self-governance in Ukraine
BCU	July 4–5, 2014	71	On Explanation of the Practical Implementation of the Law of Ukraine «On the Bar and Practice of Law» as Regards the Legal Status of Practicing Law	An explanation was provided regarding the possibility of using one of the legal statuses of practicing law set forth by law (which is in direct conflict with Part 3 of Article 4 and Clause 3 of Part 2 of Article 17 of Law No. 5076)
BCU	August 30, 2014	120	Regulation Regarding the Procedure of Receipt and Consideration of Complaints in Respect of the Attorneys' Misconduct That May Result in His or Her Disciplinary Liability	It expands the list of grounds for disciplinary action set forth by law (Part 2 of Article 34 of Law No. 5076) and unreasonably changes the jurisdiction for considering disciplinary cases set forth by law (Part 3 of Article 33 of Law No. 5076)
BCU	September 25, 2015	113	Assistant Attorney Terms of Reference	Despite not being stipulated by Law No. 5076, a fee of 50% of the minimum wage was set for entering additional data on the assistant attorney in the URAU
BCU	December 16, 2016	292	Ensuring Internship Organization Activities	Despite not being stipulated by Law No. 5076, a fee of not less than 12 monthly minimum wages (as at the date of payment) was set for taking an internship

SGBA	Date	No.	Document Title	Essence of Violation
General Congress of Attorneys of Ukraine	June 9, 2017		PCRB (restated)	<p>The FSLA attorney was prohibited from entering into a legal (lawyer's) aid agreement with the same client, in the same proceeding, and under the same or related circumstances as those regarding which the attorney was engaged to provide FSLA services (such prohibition contradicts Part 1 of Article 59 of the Constitution of Ukraine).</p> <p>The opportunities for setting additional professional attorney duties upon the decision of the congress and the BCU were determined (this contradicts Article 21, Part 7 of Article 54, and Part 4 of Article 55 of the law</p>
BCU	September 22, 2017	191	Organizational Support for Keeping the URAU	<p>Despite not being stipulated by Law No. 5076, an annual fee of 50% of the minimum wage per each one of the three services of processing, entering, and posting additional data available in the attorney profile of the URAU database at the official website of the UNBA (at the discretion of the attorney) was established</p>
BCU	September 22, 2017	194	Organizational and Technical Support for the Certification of Advanced Training for Attorneys and of the Organizers Thereof	<p>Despite not being stipulated by Law No. 5076, a fee of three minimum wages was set for the provision of organizational and technical support while considering applications for certification of advanced training for attorneys and the organizers thereof</p>
BCU	September 23, 2017	203	On Setting a Fee for the Provision of Organizational and Technical Support While Considering Complaints Submitted to the Regional QDCB and the HQDBC	<p>Despite not being stipulated by Law No. 5076, a fee of one subsistence minimum for able-bodied persons was set for the provision of organizational and technical support while considering applications (complaints) about the attorney's misconduct that may serve as grounds for disciplinary liability, complaints against decisions of the the disciplinary chambers of the QDCB, and complaints against actions or omissions on the part of the QDCB</p>

Open sources of information [109] report instances of decision-making of the SGBA at the national level in violation of the procedure established by law. In particular, it is reported that a new edition of the PCRB was approved by the General Congress of Attorneys of Ukraine without the necessary quorum (Part 8 of Article 54 of Law No. 5076).

According to authors, there is a problem of determining the date on which the decisions of the SGBA at the national level come into force due to a failure to establish the procedure for their publication. For example:

- the PCRB approved by the Constituent Congress of Attorneys on November 17, 2012 [24] was made public at the official website of the HQDBC on January 18, 2013;
- the Procedure of Advanced Training for Attorneys of Ukraine, approved by BCU Decision No. 85 of February 16, 2013 [41], was made public at the UNBA website on June 1, 2013;
- the newly restated PCRB that was approved on June 9, 2017 by the General Congress of Attorneys of Ukraine;
- [23] was made public at the UNBA website on July 18, 2017;
- BCU Decision No. 65 of June 1, 2018 «On the Results of Consideration of Appeals Filed by Attorneys Koloshyn V. P., Volynska V. I., Kostin I. P. Regarding Clarification in Relation to the Representation of Interests of Clients Whose Rights Are Violated in Temporarily Occupied Territories by the Attorney of Ukraine, and Other Related Matters» [51] is not available at the official website of the UNBA

According to authors, the decisions approved by the BCU are not transparent; their drafts are prepared without the necessary consultations with attorneys and regional SGBAs. In spite of the fact that the SGBA's decisions, according to law, are binding on attorneys, the decisions made are often published with a delay or are not made public at all. There is no transparent system for keeping reference copies (documents in the original) of the decisions of the SGBA available, nor is there any system for codifying decisions based on the amendments made thereto and their expiration; the SGBA's decision search system convenient for attorneys is not available either.

Consequently, according to authors, the regulatory activity of the SGBA at the national level, above all that of the BCU, includes regular decision-making that contradicts the Constitution of Ukraine and the laws of Ukraine, violates human rights, the rights of attorneys and the guarantees of practicing law and is particularly aimed at limiting the independence of practicing law, receiving illegal, invalid and unfair payments from attorneys and other persons, including certain categories of socially vulnerable citizens. Decisions of the SGBA approved contrary to the requirements of the legislation lead to conflicts in the community of attorneys, undermine the authority of the bar in society, and do not provide opportunities for achieving the goals specified in the UNBA Charter.

4.3. FORMATION AND OPERATION OF THE SGBA AT THE REGIONAL LEVEL

The regional SGBA (Part 2 of Article 46 of Law No. 5076) [7] shall act through the regional conferences of attorneys and the RBC (of the Autonomous Republic of Crimea, oblasts as well as the city of Kyiv and the city of Sevastopol), which are legal forms of regional attorneys' self-governance (Part 1 of Article 46 of Law No. 5076), the QDCB, and the RACB (of the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol).

The superior body of the SGBA in the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol is a regional conference of attorneys, whose registered offices are in the region and whose information is included in the URAU (Part 1 of Article 47 of Law No. 5076). The powers vested in the conference are as follows:

- electing the head and members of the RBC, and recalling them prior to the expiry of their term;
- electing delegates to the Congress of Attorneys of Ukraine;
- electing a representative of regional attorneys to the BCU and HQDBC, and recalling him or her prior to the expiry of his or her term;
- determining the number of members of the qualification and disciplinary commission of the QDCB, electing the head and members of the QDCB, and recalling them

prior to the expiry of their term;

- electing the head and members of the RACB, and recalling them prior to the expiry of their term;
- endorsing a staffing table and estimates of the RBC and the QDCB;
- considering and endorsing the report of the RBC and HQDBC as well as the audit report of the RACB, and considering and endorsing candidates for attorneys' representatives to the HQDBC and BCU;
- adopting other decisions in accordance with this law (Part 5 of Article 47 of Law No. 5076) [7].

The regional conference of attorneys is convened by the RBC at least once a year. It may also be convened at the proposal of not less than one-tenth of the total number of regional attorneys whose registered office is in the relevant region, or the RBC (Part 2 of Article 47 of the law) [7].

According to Clause 2 of Part 1 of Article 47 of Law No. 5076 [7], the quota of representation and the procedure for the nomination and election of delegates to the conference of regional attorneys shall be approved by the Bar Council of Ukraine.

Therefore, for the convening of a conference of attorneys, the RBC should have the representation quota, the procedure for the nomination and election of delegates, and the rules of procedure of the regional conference of attorneys approved by the BCU. That is how the BCU interprets Clause 2 of Part 1 of Article 47 of Law No. 5076 [7].

In the event that the RBC does not convene a conference within 30 days of the date of receipt of the proposal for its convocation, the attorneys who have signed the proposal or the BCU should decide to establish an organizational commission for convening a regional conference of attorneys. The organizational commission is vested with the rights similar to those of the RBC to convene and make sure that the conference is held and appoints the person who will preside over the conference.

Attorneys are notified of the date, time and place of the conference of regional attorneys and matters on the agenda not later than fifteen days prior to the date of conference (Part 3 of Article 47 of Law No. 5076).

The regional conference of attorneys is considered to be valid if more than half of the delegates of the conference take part in it (Part 4 of Article 47 of Law No. 5076).

According to Law No. 5076, the BCU:

- determines the quota of representation and the procedure for the nomination and election of delegates to the regional conference of attorneys (Clause 2 of Part 4 of Article 55);
- adopts the rules of the regional conference of attorneys and the terms of reference of the RBC, QDCB and RACB (Part 5 and Part 4 of Article 55);
- promotes the activity of the RBCs and coordinates their activity (Part 8 and Part 4 of Article 55);
- considers complaints against decisions, actions or omissions on the part of the RBCs and their heads, and overturns decisions of the RBC (Clause 11 of Part 4 of Article 55).

The CCBE Report as of February 26, 2014 [87] analyzes the events surrounding the convening and holding of conferences of Khmelnytskyi and Chernihiv oblast attorneys in 2013.

Specifically, the report reads as follows:

- based on BCU Decision No. 166 «On Convening the Chernihiv Oblast Conference of Attorneys» dated July 22, 2013 (which is not available at the UNBA website), only 117 out of 482 Chernihiv Oblast attorneys were allowed to attend the conference and form the regional BCU and QDCB in 2013, given that the rest had not been entered in the URAU;
- based on BCU Decision No. 208 «On Convening the Khmelnytskyi Oblast Conference of Attorneys» dated September 27, 2013 (which is not available at the UNBA website), 664 out of 843 Khmelnytskyi Oblast attorneys were not allowed to attend the conference and form the regional BCU and QDCB in 2013, given that the rest had not been entered in the URAU. By adopting this decision, the BCU established that only 179 Khmelnytskyi Oblast attorneys might attend the regional conference of attorneys and form the regional BCU and URAU.

The matter of transferring personal data on 664 Khmelnytskyi Oblast attorneys to the status of inactive and invisible

for users of the official website of the UNBA in 2013 to make it impossible for them to participate in the regional conference of attorneys was the subject of consideration by courts of various instances. By the Decision of the Supreme Administrative Court of Ukraine as of April 22, 2015 in Case No. 822/4689/13-a, the Khmelnytskyi District Administrative Court Resolution of January 13, 2014 and the Vinnytsia Administrative Court of Appeal Ruling of March 26, 2014 that had dismissed the claim were canceled, and the matter was remitted for new consideration to the court of first instance.

By BCU Decision No. 155 of June 11, 2016, «On Convening a Kyiv City Extraordinary Conference of Attorneys, Approval of the Procedure for the Nomination and Election of Delegates to the Kyiv City Conference of Attorneys, the Rules of Procedure of the Kyiv City Conference of Attorneys and the Establishment of the Quota of Representation»:

- the Kyiv City Conference of Attorneys was convened with the relevant agenda;
- the Organizing Committee of the Kyiv City Conference of Attorneys was established in the number of seven persons and its members were appointed delegates to the conference;
- the Organizing Committee was obliged to ensure the holding of the Kyiv City Conference of Attorneys;
- the head of the BCU was tasked, if required, to fill up the composition of the organizing committee.

BCU Resolution No. 153 of June 11, 2016 [52], which approved the conclusion of a special ad-hoc commission to verify the activity of the Kyiv City SGBA to comply with Law No. 5076 and the decisions of the higher SGBA (hereinafter referred to as the «conclusion») is the grounds for convening an extraordinary conference. According to the conclusion, the Kyiv City QDCB, a non-governmental organization founded by its members, which illegally exercised the functions of the Kyiv City QDCB, was operational in Kyiv during the entire term of Law No. 5076. In particular, it took the following actions: organized and conducted qualifying exams, adopted decisions on the issuance of evidentiary certificates of qualifying exams, adopted decisions on the suspension or termination of the right to practice law, conducted disciplinary proceedings in respect of attorneys, received and counted a fee for qualifying exams, dealt with other matters that are within the exclusive powers of the QDCB.

By BCU Head Order No. 61 of July 13, 2016, twenty-two persons were included in the conference organizing committee, and given the status of delegates to the Kyiv City Conference of Attorneys without being elected at the meeting of attorneys.

The election of 195 delegates to the Kyiv City Conference of Attorneys (Annex to BCU Resolution No. 155 of June 11, 2016) by the Kyiv district councils is in accordance with the procedure for the nomination and election of delegates to the Kyiv City Conference of Attorneys. The organizing committee appointed presiding officers and secretaries of the meeting of attorneys of the aforesaid districts of Kyiv without having them elected by attorneys.

As many as 195 delegates were elected to the Kyiv City Conference of Attorneys by the meeting of attorneys held in each districts of Kyiv on July 23, 2016. Subsequently, the meetings of attorneys in Podilskyi, Solomianskyi and Shevchenkivskyi districts of Kyiv were recognized by the organizing committee as failed due to the alleged violation of the procedure for holding such meetings.

On August 6, 2016, delegates to the conference arrived at the venue of the conference. However, before being registered for participation in the conference, the delegates elected at the meetings of attorneys of Podilskyi, Solomianskyi and Shevchenkivskyi districts of Kyiv (a total of 81 persons) were not admitted to the conference by unknown persons, who did so by using physical force and threats and blocking the entrance to the premises.

At the same time, at a place designated for the Kyiv City Conference of Attorneys, a meeting presided over by attorney Yurii Mikhalskyi, which is referred to by certain persons as «Kyiv Attorneys Conference», was held.

On October 8, 2016, after the unsuccessful attempts of August 6 and September 10, the following decisions were adopted by the meeting:

- on recalling the head and members of the Kyiv City BC;
- on recalling the head and members of the Kyiv City QDCB;
- on electing the head of the Kyiv City BC and other persons;
- on electing the head and members of the Kyiv City QDCB;

- on recalling a member of the BCU from the city of Kyiv and electing a new member of the BCU from the city of Kyiv;
- on recalling a member of the HQDBC from the city of Kyiv and electing a new member of the HQDBC from the city of Kyiv.

At the same time, the meeting was supposedly attended by delegates (a total of 25 people) elected at a repeat meeting of attorneys in Podilskyi, Solomianskyi and Shevchenkovskyi districts of Kyiv. The date, time, place of repeat meeting of attorneys in such districts, as well as the way of notifying the attorneys about such meetings remain unknown.

The minutes of the meeting dated October 8, 2016 have never been made public; therefore, a comprehensive personal composition of the attorneys who took part in the meeting still remains unknown.

At the UNBA website on Facebook network as well as at the official website of the UNBA, a message containing information about a new member of the Kyiv City SGBA was posted, and the meeting held on August 6 and October 8, 2016 was labeled the «Kyiv Attorneys Conference».

On October 18, 2016, the official website of the UNBA provided information on the revised composition of self-government of the SGBA of Kyiv based on decisions of the meeting held on September 10 and October 8, 2016. On November 15, 2016, the official website of UNBA provided information on the creation of the website of the Kyiv City BC and the Kyiv City QDCB [94].

Since June 11, 2016, the UNBA has not entered data on the attorneys provided with certificates of the right to practice law by the BC of Kyiv, which has its registered office at 30, Biloruska vul. in Kyiv, in the URAU.

On June 11, 2016, the head of the UNBA drafted and signed the decision on setting up a new legal entity, and namely, the Terms of Reference of the Kyiv City QDCB, on the basis of which a new legal entity under the name of «Kyiv City Qualification and Disciplinary Commission of the Bar» was registered.

Based on the results of holding the meeting, drafting the minutes of the meeting held on August 6 and October 8, 2016, and conducting relevant registration actions regarding the

change of the head of the BC of the city of Kyiv upon the application requests filed by the BC of Kyiv, relevant information was entered in the URAU, and a pre-trial investigation in several criminal proceedings started.

In 2016–2017, the BCU adopted a number of decisions according to which the decisions of the conference of attorneys of the city of Kyiv held on November 5, 2016, January 28, 2017, and April 27, 2017 were recognized as having no legal effect.

In all official documents, appeals to courts, law enforcement authorities, the head of the UNBA emphasizes that the only authorized self-governing bodies of attorneys in the city of Kyiv are those elected by the meeting held on August 6 and October 8, 2016.

The alternative BC of the city of Kyiv established at the meeting has not convened a conference of attorneys of the city of Kyiv for the second consecutive year, and the BCU has not approved any quota of representation and the procedure for nominating and electing delegates to the conference of attorneys of the city of Kyiv.

Therefore, in consequence of the situation currently surrounding the SGBA of the city of Kyiv, there have been parallel SGBAs – two BCs of the city of Kyiv and two QDCBs of the city of Kyiv – operating in Kyiv at one and the same time for the past two years; they both perform same functions of the RBC and the QDCB provided for by law (Part 4 of Article 48 and Part 5 of Article 50 of Law No. 5076), and neither of them recognizes the other one.

The events surrounding the Kyiv Oblast Extraordinary Conference of Attorneys held on September 10, 2016, which was not recognized by the BCU, are also well-known (BCU Decision No. 179 of September 13, 2016 «On Issues That Arose in Connection with the Kyiv Oblast Conference of Attorneys held on September 10, 2016») [61].

According to authors, issues of concern regarding the formation and operation of the SGBA at the national and regional level in 2012–2018 will require separate analysis.

More detailed information on the developments in the SGBA at the regional level is given in printed publications, in particular, in the newspapers Yurydychna Hazeta and Ukrayinska Pravda, and in the monthly magazine Advokat for lawyers [103].

4.4. ACCESS TO THE PROFESSION

Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law (Clause 9 of the Basic Principles on the Role of Lawyers, UN) [15].

Obtaining the status of an attorney in Ukraine requires the following criteria to be met:

- having complete higher legal education;
- speaking the official language of the state;
- having at least two years of experience in the field of law;
- taking the qualifying exam;
- taking an internship for at least six months (unless otherwise provided for by law);
- taking the oath of attorney of Ukraine;
- obtaining a certificate for the right to practice law (Part 1 of Article 6 of Law No. 5076).

A person may not be an attorney, if such person:

- has outstanding or unexpunged convictions under circumstances set forth by law;
- has no or limited legal capacity;
- has his or her right to practice law terminated – during two years starting the date of adoption of the relevant decision;
- has been dismissed from the position of a judge, public prosecutor, investigator, notary, public service or local self-government officer for breaching the oath or committing a corruption-related offense – during three years starting the date of such dismissal (Part 2 of Article 6 of Law No. 5076)..

Admission to the qualifying exam and evaluation of its results is carried out in accordance with the Procedure for Admission to the Qualifying Examination, the Procedure for Taking the Qualifying Examination and the Methodology for Evaluating the Results of the Qualifying Examination for Acquiring the Right to Practice Law in Ukraine approved by BCU Decision No. 270 of December 17, 2013 [39].

Taking the qualifying exam takes place in accordance with the Program for Taking the Qualifying Examination approved by BCU Decision No. 68 of February 26, 2016 [44].

For taking the qualifying exam, a fee is set, the amount of which may not exceed three minimum subsistence levels for able-bodied persons established by law as of the date the person submits an application for admission to the qualifying exam (Clause 1 of Part 1, Clause 1 of Part 2 of Article 58 of Law No. 5076) [7].

An internship is taken in accordance with the Regulation Regarding the Organization and Procedure for Taking an Internship to Obtain a Certificate of the Right to Practice Law approved by BCU Decision No. 80 of June 1, 2018 [33].

Not provided for by Law No. 5076, a fee for taking an internship in the amount of at least 12 monthly minimum wages (as of the date of payment) was set by BCU Decision No. 292 of December 16, 2016 [29].

Law of Ukraine No. 1791–VIII, dated December 20, 2016 [8] sets a limit on the amount of internship fee which may not exceed three monthly minimum wages as of the date the person submits an application for an internship (Paragraph 2 of Part 4 of Article 10 of Law No. 5076).

In the event of continuation of an internship, according to the decision of the RBC, the amount of an additional fee may not exceed 0.5 monthly minimum wage set as of the date of adoption of said decision for each additional month of internship (Part 9 of Article 10 of Law No. 5076).

Draft Law No. 6451 «On Amendments to Article 10 of the Law of Ukraine «On the Bar and Practice of Law» (concerning equal access to the profession), dated May 16, 2017 [65], brought in by MP Ruslan Solvar,

proposes amending Part 5 of Article 10 of Law No. 5076 by stipulating that persons who, as of the date of application for admission to the qualifying exam, have their job experience of an assistant attorney of at least one year during the last two years may be excused from an internship, so may persons who have job experience in the positions of judge, prosecutor, investigator, and a detective of the NABU of not less than five years.

As it follows from the Explanatory Note to the Draft Law, the proposed amendments thereto need to be made due to the fact that the current wording of Part 5 of Article 10 of Law No. 5076, according to which only those who, as of the date of application for admission to the qualifying exam, have their job experience of an assistant attorney of at least one year during the last two years, are excused from an internship, is discriminatory, in particular, with respect to persons who worked or continue working in the positions of judge, prosecutor, investigator, or a detective of the NABU and who decided to change their field of professional activity and acquire the status of an attorney.

According to the conclusion of the VRU Central Research and Evaluation Department dated October 30, 2017, the amendments proposed in the draft law do not completely eliminate the discriminatory component, since they only center around the judges, prosecutors, investigators and detectives of the NABU who have their relevant job experience and do not apply to other persons who have complete higher legal education and relevant job experience in the field of law (employees of legal departments of government authorities and local self-government, enterprises, institutions, organizations and other legal entities of public and private law, and those who occupy research and academic teaching positions, etc.).

Taking into account all the above, the VRU Central Research and Evaluation Department believes that the amendments provided for by the draft law should either apply to all persons who have complete higher legal education and on the date of application for admission to the qualifying exam have five years of work in the field law, or Part 5 of Article 10 of Law No. 5076 should be left as it is.

The introduction of a «monopoly» of attorneys for

representation in courts had a significant impact on the increase of the number of persons who have the intention of becoming an attorney; therefore, a waiting period for taking the qualifying exam, in the majority of the QDCB, ranges from six to 18 months.

The results of the Corruption Risks in the SGBA System Survey indicate the highest risks of corruption in the SGBA system when acquiring an attorney status [100]. In particular, 47.3% of attorney-respondents reported having been aware of incidents of corruption proposals from persons who expressed their intention of becoming an attorney to self-governing bodies of attorneys while undertaking the procedure for obtaining a certificate of the right to practice law (see Figure 3). At the same time, 37.6% of respondents reported having been aware of corruption proposals from self-governing bodies of attorneys (their members) to those who expressed their intention of becoming an attorney while undertaking a procedure for obtaining a certificate of the right to practice law (see Figure 4).

Law No. 5076 establishes circumstances incompatible with the activity of an attorney (Part 1 of Article 7).

In accordance with Clause 1 of Part 1 of Article 7 of Law No. 5076, holding the positions by persons specified in Clause 1 of Part 1 of Article 4 of the Law of Ukraine «On the Principles of Prevention and Counteraction to Corruption», which became invalid on September 1, 2016, is incompatible with the activity of an attorney.

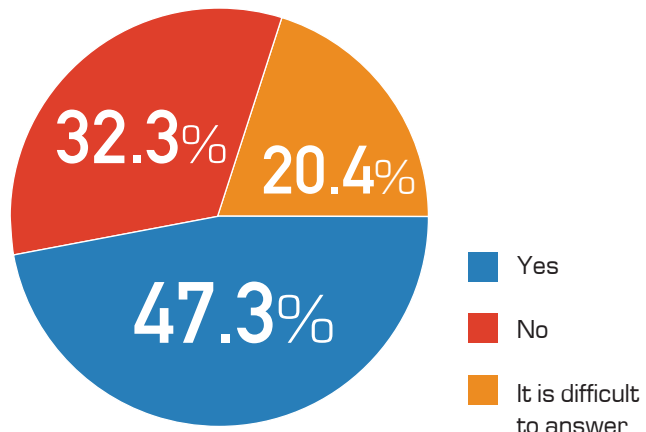
Therefore, Clause 1 of Part 1 of Article 7 of Law No. 5076 contains a reference to the law that has not been in force for about two years, due to which a negative practice of admission to the qualifying exam and taking an internship by persons having the status of a public prosecutor has taken shape, including heads of local and regional public prosecutor's offices.

Also, taking into account the aforesaid gap in Law No. 5076, senior officials, law enforcement officials, judges and other public officers may aspire to obtain a certificate of the right to practice law.

To fill the aforesaid gap, Draft Law No. 7392 of December 13, 2017 «On Amendments to Clause 1 of Part 1 of Article 7 of Law No. 5076 Regarding the Inconsistency

Figure 3.

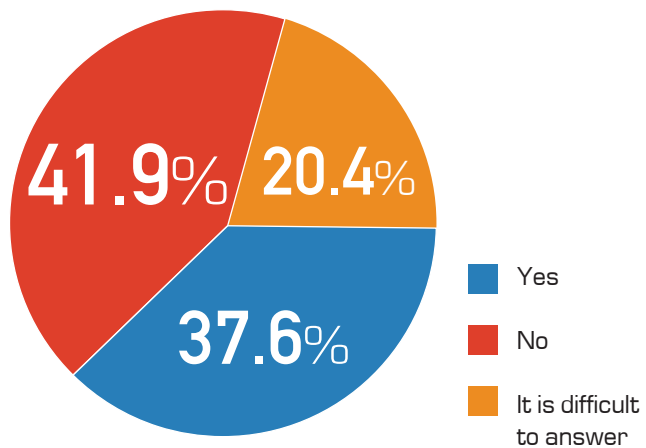
Incidents of Corruption Proposals from Persons Who Expressed Their Intention of Becoming an Attorney to Self-Governing Bodies of Attorneys



Source: the results of the Corruption Risks in the SGBA System Survey, which was conducted by Tomorrow's Lawyer, a non-governmental organization

Figure 4.

Incidents of Corruption Proposals from Self-Governing Bodies of Attorneys (Their Members) to Those Who Expressed Their Intention of Becoming an Attorney



Source: the results of the Corruption Risks in the SGBA System Survey, which was conducted by Tomorrow's Lawyer, a non-governmental organization

Requirements», brought in by MP Oleksandr Suhoniako, proposes amending Clause 1 of Part 1 of Article 7 of Law No. 5076 by making a reference to Clause 1 of Part 1 of Article 3 of the Law of Ukraine «On Prevention of Corruption», which defines the legal and organizational principles for the functioning of the system of prevention of corruption in Ukraine, the content and procedure for the application of preventive anti-corruption mechanisms, and the rules for the elimination of consequences of corruption offenses. However, Clause 1 of Article 1.3 of the Law of Ukraine «On Prevention of Corruption» almost

entirely duplicates Clause 1 of Part 1 of Article 4 of the Law of Ukraine «On the Principles of Prevention and Counteraction to Corruption».

BCU Decision No. 80 of June 1, 2018 «On Introduction and Approval of Amendments to the Regulation Regarding the Organization and Procedure for Taking an Internship to Obtain a Certificate of the Right to Practice Law», places on an intern the obligation, which is not provided for by Law No. 5076, to hear an «adaptation course for the profession of attorney»,

obviously on a paid basis, at the Higher School of Attorneys under the UNBA (Sub-Clause 5.16 of the Regulation Regarding the Organization and Procedure for Taking an Internship to Obtain a Certificate of the Right to Practice Law). At the same time, according to the introduced amendments, the fact that an intern has taken the internship «adaptation course for the profession of attorney» at the Higher School of Attorneys under the UNBA should be checked by the RBC when evaluating the results of the internship according to Sub-Clause 11.6.5 of the Regulation Regarding the Organization and Procedure for Taking an Internship to Obtain a Certificate of the Right to Practice Law.

Amendments made to the Assistant Attorney Terms of Reference, approved by BCU Decision No. 113 of September 25, 2015 (as amended) [36], stipulate an additional condition for acquiring the status of an assistant attorney – to hear, obviously on a paid basis, a special instruction course «introduction into the profession of assistant attorney» at the Higher School of Attorneys under the UNBA according to BCU Decision No. 81 of June 1, 2018, which is not provided for by Law No. 5076. The confirmation from the Higher School of Attorneys under the UNBA of the fact of undertaking the instruction course «introduction into the profession of assistant attorney» was made one of the conditions of entering the data on an assistant attorney in the URAU and the issue of an assistant attorney certificate, which is not provided for by Law No. 5076.

According to authors, the procedure for access to the profession of attorney has a number of significant shortcomings, in particular:

- the absence of moral and ethical standards specified by law for persons who have the intention of becoming an attorney (for example, with regard to integrity);
- a long process of waiting for taking the qualifying exam;

- an imperfect model of internship, taking an internship after passing the qualifying exam, and not prior to taking it, as it takes place in most EU countries;
- an extremely short term of an internship compared to that of the majority of EU countries (three years on average);
- access to the profession of attorney unreasonably becomes even more difficult due to the imposition of additional requirements and restrictions not provided for by Law No. 5076, for example, undergoing training at the Higher School of Attorneys under the UNBA by interns and assistant attorneys.

In accordance with the Concept of Reforming the Procedure for Taking the Qualifying Examination to Obtain the Right to Practice Law, approved by BCU Decision No. 25 of March 30, 2018, starting September 1, 2018, taking the qualifying exam should be in accordance with the new procedure, which, as authors believe, is not in compliance with Articles 8 and 9 of Law No. 5076 and needs amending in terms of application not to the QDCB at the place of residence and taking the exam not at the place of residence on condition that the fee for the qualifying exam is paid to two QDCBs at a time.

Within the framework of the implementation of the 2015–2020 Strategy for Reforming the Court Structure and Procedure as well as Those of Related Institutions of Law [12], the following is provided for:

- tightening the requirements for the practice of law, in particular, improving the professional and moral and ethical standards for persons who have the intention of acquiring the status of an attorney;
- improving the procedures for taking the qualifying exam and taking an internship; improving the assistant attorney institution (Paragraphs 4 and 5 of Sub-Clause 5.6 of the Strategy).

4.5. CONTINUING PROFESSIONAL DEVELOPMENT

Continuing professional development is among the major international standards of the organization and operation of the bar in democratic countries..

Attorneys should be empowered to form self-governing associations themselves in order to have their interests represented, to undergo continuing education and advanced training, and maintain their professional level (Clause 24 of the United Nations Basic Principles on the Role of Lawyers).

Attorney's professional competence is one of the 10 major principles of this profession in the European Union:

- an attorney may not provide advice and represent a client in an effective manner without undergoing proper professional education and training;
- post-graduate training (continuing professional development) has been increasingly drawing more and more attention in view of a high pace of amending and implementing the legislation as well as owing to the rapid development of technology and economic ties (one of the principles of the CCBE Charter of Core Principles of the European Legal Profession).

Under Recommendation No. R (2000) 21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer:

- all necessary measures should be taken in order to ensure a high standard of legal training... and to provide for the continuing education of lawyers (Clause 2 of Principle II);
- legal education, including programs of continuing education, should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect and promote the rights and interests of their clients and support the proper administration of justice (Clause 3 of Principle II).

The IBA Continuing Professional Development Guidelines are as follows:

- lifelong learning is a must for the legal profession (Guideline 1);
- the responsibility to encourage their members to take part in continuing education shall rest with professional bar associations (Guideline 2);
- professional bar associations shall develop their own continuing education strategy (Guideline 3);
- all necessary forms of training techniques shall be made available (Guideline 4);
- high quality training on all fields of law practiced by the members of the bar shall be integrated into continuing education (Guideline 4a);

- soft skills (negotiation techniques, oratory, computer skills, etc.) shall be taught as well (Guideline 4b);
- research and teaching activities shall be treated as a part of continuing education (Guideline 4c);
- special attention shall be paid to training and education on ethical issues (Guideline 4d);
- continuing education shall be made an obligation of every member of the legal profession and should have its own measuring system (Guideline 5);
- continuing education shall be measured in regular intervals (Guideline 5a);
- continuing education shall be a proper mixture of learning activities devoted to hard law, soft skills and ethical issues (Guideline 5b);
- a failure to fulfill the obligation of undergoing continuing education may entail disciplinary liability (Guideline 5c);
- professional associations shall determine an accreditation system to be used (Guideline 6);
- professional associations active in various countries shall acknowledge the education systems of each other (Guideline 7);
- professional associations shall be responsible for making continuing education affordable to all members of the legal profession (Guideline 8).

The legislative principles of the continuing professional development of attorneys of Ukraine are set forth in Law No. 5076, which provides for the following:

- improving one's professional level shall be a professional duty of every attorney (Clause 4 of Part 1 of Article 21);
- not performing or improperly performing one's professional duties shall be treated as a misconduct (Clause 5 of Part 2 of Article 34);
- committing a repeat misconduct by an attorney during one and the same year shall be considered to be grounds for imposing a disciplinary penalty in the form of suspension of the right to practice law on such attorney (Clause 1 of Part 2 of Article 31);
- maintaining a highly professional level of the bar shall be one of the objectives pursued by attorneys' self-governance (Clause 2 of Part 1 of Article 44);
- ensuring that Ukrainian attorneys are highly professional shall be a responsibility of the UNBA (Clause 3 of Part 2 of Article 45);
- promoting attorneys' advanced training shall be a responsibility of the RBC (Clause 4 of Part 4 of Article 48);
- training activities shall be conducted by the QDCB, HQCB, RBC, BCU, and UNBA (Part of Article 61).

According to the PCRB, the attorney shall regularly raise his or her professional level and competence and possess sufficient information about any changes in the legislation in effect (Part 3) [23].

Continuing professional development of attorneys in Ukraine is in accordance with the Procedure for Continuing Professional Development of Attorneys of Ukraine approved by the BCU decision of February 16, 2013, as amended, (based on the wording approved by BCU Deci-

sion No. 82 of June 1, 2018). Said procedure (PCDA), in its entirety, is in compliance with the systems of continuing professional development adopted in democratic countries, in particular:

- it is extended to attorneys who practice law in the forms specified by Law No. 5076, as well as assistant attorneys;
- it stipulates a free choice of professional development of attorneys from among 15 types:
 - training in professional programs for professional development of attorneys of the HSA under the UNBA, as well as at higher educational institutions of the III and IV accreditation level;
 - participation in conferences, workshops, round tables, training workshops, programs, etc., with the participation of the SGBA or according to programs accredited by the UNBA Accreditation and Certification Council;
 - training at the schools of attorneys and professional development centers under the HSA;
 - the publication of scientific or scientific-and-practical articles in printed media or electronic form of professional and other publications;
 - the publication of monographs, textbooks, manuals, etc.;
- it establishes the evaluation period of three years;
- it takes the scoring system as the basis for the evaluation of attorneys' professional development;
- it determines the minimum number of points during the evaluation period – 30, and during the year – 10;
- it establishes the requirement to score at least six points for training on ethics and professional standards during the evaluation period;
- it stipulates the possibility of transfer of part of surplus points for the next evaluation period;
- it stipulates the possibility of full or partial exemption from further professional development training in the event of prolonged disability or for other substantial reasons;

- it establishes a self-reliant approach of attorneys to scoring;
- it stipulates the possibility of control on the part of the QDCB;
- it establishes the possibility of taking disciplinary action against an attorney in the event of breach of his or her duty in respect of continuing professional development.

At the same time, the PCDA contains a number of major deficiencies, which complicate all attorneys' access to continuing professional development and restrict the participation of potential providers of professional development in the process of training of attorneys. In particular, the PCDA:

- stipulates a complicated and non-transparent procedure for the accreditation of professional programs for professional development and certification of persons admitted to the organization and/or conducting activities of professional development of attorneys by the UNBA Accreditation and Certification Council, in particular:
 - obtaining a certificate (document) of admission to the organization and/or implementation of activities;;
 - submitting an application not later than one month prior to the program;
 - providing a large amount of information and a number of documents, etc;
- it establishes an extremely formal and inconvenient accounting procedure during the process of continuous professional development of attorneys:
 - the need to obtain a certificate of the relevant activity;
 - the need to obtain a certificate of advanced training on an annual basis;
 - submitting documents in hard copies only, etc.

BCU Decision No. 194 of September 22, 2017 [57] allows for a fee, not set forth by Law No. 5076, for providing organizational and technical support while considering applications for the certification of advanced training activities for attorneys and of the organizers thereof. Based on the text of the BCU decision, the changes are introduced both to increase the effectiveness of considering documents submitted by the organizers of activities for attorneys, and to increase the level and quality of such activities. The fee is set at the rate of three minimum wages as of the date the

organizer of activities submits a relevant application.

The official website of the UNBA does not specify documents, which, according to the PCDA, are approved by the UNBA Accreditation and Certification Council. Specifically, these include the following:

- the criteria (conditions) for the accreditation of advanced training programs for attorneys and certification of persons admitted to the organization and/or conduct of advanced training activities;
- the Regulation Regarding the Certification of Advanced Training Programs for Attorneys and of Persons Admitted to the Organization and/or Conduct of Advanced Training Activities;
- the Procedure for the Certification of Advanced Training Programs for Attorneys and of Persons Admitted to the Organization and/or Conduct of Advanced Training Activities.

As of August 20, 2018, a list of certified experts of the UNBA includes 1,843 persons. At the same time, in addition to the full name of the person and certified subject/subjects, any other information about said persons, such as the availability of a certificate of the right to practice law and the date of its receipt, contact data, education data, academic rank and degree (if any), professional background, including the current position or type of activity, a list of publications (if any, data on teaching experience in higher education institutions or participation in research and/or practical activities, in particular, on the subject certified), and other data confirming a high qualification of a certified expert having theoretical and practical knowledge, skills and abilities in the certified subject, is not available in said document.

The official website of the UNBA does not contain any information on the activity of the UNBA Accreditation and Certification Council, a schedule of its meetings and decisions approved by the Council.

Within the framework of implementation of the 2015–2020 Strategy for Reforming the Court Structure and Procedure as well as Those of Related Institutions of Law [12], it is planned to polish the procedure of advanced training

for attorneys (Sub-Clause 5.6 of Clause 5 of the Strategy).

4.6. UNIFIED BAR REGISTER OF UKRAINE

Acting in line with Part 1 of Article 17 of Law No. 5076, the BCU ensures that the URAU is kept to collect, store, register, and provide reliable data on the number and personal identities of attorneys of Ukraine as well as attorneys of foreign states who have acquired the right to practice law in Ukraine on the basis of the above law, and data on the legal forms of practicing law chosen by attorneys. The BCU and RBCs are responsible for entering data in the URAU.

Under Part 2 of Article 17 of Law No. 5076, the following data is entered in the URAU:

1. First, last and middle name of an attorney
2. Number and date of issue of a certificate of the right to practice law, number and date of adoption of the decision to issue a certificate of the right to practice law (number and date of adoption of the decision to enter data on an attorney of a foreign state in the URAU)
3. Name and place of location of a legal form of practicing law, and the numbers of communication means
4. Place of work of an attorney, numbers of communication means
5. Information about the termination or suspension of the right to practice law
6. Other data set forth by this law.

Therefore, according to Clause 6 of Part 2 of Article 17 of Law No. 5076, only data set forth by this law may be entered in the URAU.

Under Part 4 of Article 17 of the law, data entered in the URAU is available at the official website of the UNBA. The BCU and relevant RBCs provide extracts from the URAU at the request of an attorney or another person.

According to Article 45 of the CCrP of Ukraine, a defense counsel may not be an attorney data on whom is not en-

tered in the URAU or data on the termination or suspension of whose right to practice law is available in the URAU.

Under Part 6 of Article 17 of Law No. 5076, the Procedure for Keeping the URAU was adopted by BCU Decision No. 26 of December 17, 2012 (as amended) [38]. On July 25, 2018, the BCU adopted the decision to endorse the Procedure for Keeping the URAU.

Very many provisions of the Procedure for Keeping the URAU are in direct conflict with Law No. 5076. For example, contrary to Law No. 5076, the following data is entered in the URAU:

- the name and place of location of several legal forms of practicing law (Sub-Clause 3.1.3 of the above procedure);
- several place of work addresses of an attorney (specifying the principal place of work and/or additional place of work addresses (Sub-Clause 3.1.4 of the above procedure);
- data on BCU decisions, notes of the payment of fees, electronic addresses, electronic photos of an attorney, continuing education information (Sub-Clause 3.1.6 of the above procedure);
- data on assistant attorneys (Sub-Clause 3.83.11);
- data on attorney interns (Sub-Clause 3.13–3.15).

In accordance with Part 3 of Article 4 of Law No. 5076, an attorney may practice law on an individual basis or using the legal forms of an attorney's office or attorney company (legal forms of practicing law), therefore, the registered office addresses of several legal forms of practicing law, as provided for in Sub-Clause 3.1.3 of the Procedure for Keeping the URAU, may not be entered in the URAU simultaneously.

Sub-Clause 3.1.4 of the Procedure for Keeping the URAU in terms of entering several places of work of one and the same attorney in the URAU is in direct contradiction to Sub-Clause 2 of Part 2 of Article 17 of Law No. 5076 and Clause 3.3 of the above procedure, which provide for entering data on the address of only one place of work of an attorney in the URAU. Entering an attorney's place of work

address in the URAU is important for the protection of such attorney's professional rights, observance of the guarantees of practicing law, taking disciplinary action against an attorney and ensuring the implementation of attorneys' self-governance.

Law No. 5076 (Clause 6, Part 2, Article 17) does not provide for entering such data in the URAU as additional place of work addresses, assistant attorneys/attorney's interns, overall experience in the practice of law, position occupied in self-governing bodies of attorneys, types of cases, awards (honorary degrees, honors, etc.), addresses of official websites in social networks, model and serial number of computer equipment used by an attorney, characteristics and corresponding serial numbers of information carriers used by an attorney in his or her activity, transport vehicles used by an attorney, logo and/or name of the website of the AC, AO in which an attorney practices law, etc. (Sub-Clause 3.1.7).

Law No. 5076 does not provide for the collection of any fees for entering data in the URAU, however, at the same time, Sub-Clauses 5.1 and 5.3 of the Procedure for Keeping the URAU provide for the possibility of setting a fee for initial entering of data in the URAU, confirmation, entering changes in the URAU in accordance with the decision of the BCU.

The Assistant Attorney Terms of Reference approved by BCU Decision No. 113 of September 25, 2015 (as amended) provides for the payment of a fee for entering additional data on an assistant attorney in the URAU in the amount of 50 percent of one minimum wage established by law on the date of payment (Sub-Clause 3.5.13 and Sub-Clause 4.3).

BCU Decision No. 191 of September 22, 2017 «Issues of Organizational Support for Keeping the Unified Register of Attorneys of Ukraine» set an annual fee for processing, entering, and posting additional information in the attorney's profile (at his or her discretion) in the URAU database at the official website of the UNBA in the amount of 50 percent of one minimum wage on the date such information is provided to the regional bar council (for either of the three positions).

Taking into account that ensuring the openness of information about the bar and practice of law and ensuring the

keeping of the URAU is one of the main objectives of attorneys' self-governance in Ukraine, and ensuring access and openness of information regarding attorneys of Ukraine is a function of the UNBA (Clause 5 and Clause 6 of Part 1 or Article 44 and Clause 4 of Part 2 of Article 45 of Law No. 5076), such data entered in the URAU is considered to be information of public interest (socially necessary information) since it is open at the official website of the UNBA (Part 4 of Article 17 of Law No. 5076). Therefore, in accordance with Clause 4 of Part 2 and Part 4 of Article 13 of the Law of Ukraine «On Access to Public Information» (Law No. 2939), the UNBA, as an information provider, when considering matters of access to information, should be guided by this law.

In accordance with the views expressed by the Grand Chamber of the Supreme Court in its March 29, 2018 decision in Case No. 640/12325/15-c, the public interest and the public nature of legal relationships in which attorneys take part derive from the comprehensiveness of the implementation of functions of the bar in respect of the protection of rights of the public at large [69].

In accordance with Clause 2 of Resolution No. 835 of the Cabinet of Ministers of Ukraine, dated October 21, 2015, the information providers determined by Law No. 2939 «On Access to Public Information» [14] were required, during the period of six months (i.e. before April 25, 2016), to ensure posting and further updating of data arrays at their

official websites in accordance with the Regulation on Data Arrays Subject to Publication in the Form of Open Data approved by the above resolution.

According to authors, information of the URAU was posted at the private website of without the use of a list of mandatory open data array, which ensures the consistent stability of data.

In its current form, the URAU provides the opportunity only to receive information about a separate attorney according to his or her data or to choose the attorney who may be most appropriate for one's legal needs from the list of those proposed (found). The way the URAU exists does not make it possible to obtain reliable open-source data as follows:

- the number and personal identities of all Ukrainian attorneys;
- the number of attorneys in every region;
- the number and personal identities of attorneys of foreign states who have acquired the right to practice law in Ukraine;
- the legal forms of practicing law chosen by attorneys and their quantity.

«Shadowing» Information in the URAU

1. The following was approved at the meeting of the BCU in the city of Mukachevo on July 4–5, 2014:

- BCU Decision No. 75 «On Amendments to the Regulation Regarding Fees to Ensure the Implementation of Attorneys' Self-Governance» [59];
- BCU Decision No. 76 «On Amendments to the Procedure for Keeping the URAU» [41].

According to BCU Decision No. 75 «On Amendments to the Regulation Regarding Fees to Ensure the Implementation of Attorneys' Self-Governance», Clause 2 thereof, in the part following Sub-Clause 2.20, was amended by adding new Sub-Clause 2.22 to read as follows: «2.22. As a result of failure by the attorney to make payment of an annual fee within the established period to ensure the self-governance of attorneys as a source of funding the maintenance of the URAU, data on such an attorney shall be transferred to the state of being inactive and invisible to users of the official website of the UNBA and their pro-

cessing and maintenance shall not be performed by the URAU website administrator. Such an attorney may not participate in the activity (work) of self-governing bodies of attorneys due to the lack of data on **OF** him or her in the URAU» (Clause 8).

According to BCU Decision No. 76 «On Amendments to the Procedure for Keeping the URAU», dated July 4–5, 2014:

– Clause 4.12 thereof was amended to read as follows: «4.12. Entering data in the URAU and any amendments thereto, providing the attorney with a transfer extract shall be solely on condition that the attorney pays an annual fee to ensure the implementation of the self-governance of attorneys, including payments by installment. Should the attorney fail to pay an annual fee to ensure the implementation of attorneys' self-governance, entering data on him or her in the URAU and any amendments thereto shall not be made and the previously entered data shall become inactive and invisible until the date of debt payment. At the same time, such an attorney may not participate in the activity (work) of self-governing bodies of attorneys due to the lack of data on him or her in the URAU.»

Therefore, in the event 1) that the attorney fails to pay an annual fee to ensure the implementation of the self-governance of attorneys; 2) that the RBC fails to transfer or performs incomplete transfer of the fees received from the attorney to ensure the self-governance of attorneys to the account of the UNBA in the established amount; 3) or that the RBC fails to return the reconciliation statement between the UNBA and the corresponding RBC regarding the payment of annual fees by attorneys, data on such attorneys in the URAU becomes inactive and inaccessible to the users of the official website of the UNBA, i.e., in fact, such attorneys are taken off the URAU.

On October 26, 2014, as a result of the aforesaid amendments to the Regulation Regarding Fees to Ensure the Implementation of Attorneys' Self-Governance and the Procedure for Keeping the URAU, the URAU contained personal data on 801 attorneys in Kyiv; data on more than 3,500 attorneys in Kyiv was closed to public access.

At the same time, as of October 24, 2014, the BCU was provided with data on 6,194 persons to be entered in the URAU.

The transfer of data on part of the attorneys contained in the URAU into the state of being inactive and invisible actually deprived such attorneys of their right to participate in the activity (work) of self-governing bodies of attorneys, including the conferences and the congress of attorneys, invalidated record keeping and providing open and reliable information on the number of members of the attorney team in Ukraine, and created barriers for such attorneys to practice law, in particular as regards the performance of functions of a defense counsel in a criminal proceeding.

In addition, such actions had signs of disciplinary penalties (as a combination of suspension of the right to practice law and taking off the URAU) used outside the disciplinary proceedings provided for by law.

On the other hand, according to Article 54 of Law No. 5076, the decision to pay annual attorneys' fees to ensure the implementation of their self-governance, defining their use, as well as liability for a failure to pay fees refers to the exclusive powers of the Congress of Attorneys of Ukraine.

On October 24, 2014, the BCU scheduled holding a congress of attorneys of Ukraine in the city of Mukachevo of Transcarpathian Oblast on November 20–21, 2014 to elect its representatives to the HCJ and the QDCPP.

On October 25, 2014, the BCU adopted Decision No. 166, stipulating in Clauses 2 and 3 thereof that attorneys may participate in the conference provided that their data is entered in the URAU in accordance with the Procedure for Keeping the URAU approved by the BCU and taking into account the reconciliation statement between the UNBA and the BCU provided for by a sub-clause of the said procedure, as well as information as of the date of approval of the decision by the BCU and according to the attached list.

Based on the November 7, 2014 decision of the Kyiv District Administrative Court in the case of the Kyiv City Bar Council against the BCU represented by the UNBA, BCU Decision No. 75 «On Amendments to the Regulation Regarding Fees to Ensure the Implementation of Attorneys' Self-Governance», dated July 4–5, 2014, as regards amending Clause 2 thereof after Sub-Clause 2.20 by adding new Sub-Clause 2.22 thereto, and BCU Decision No. 76 «On Amendments to the Procedure for Keeping the URAU», dated July 4–5, 2014, as regards restating Sub-Clause 4.12 of the said procedure by adding Sub-Clauses 4.13 and 4.14 thereto, adding Sub-Clause 4.17 thereto in terms of the last sentence of the sub-clause and adding Sub-Clause 6.2 of Clause 6 thereof were declared to be unlawful and subject to cancellation [78; 72].

Therefore, when convening a conference and determining its composition, the BCU was guided by the provisions of the Procedure for Keeping the URAU, which stipulated the transfer of data on attorneys contained in the URAU into the status of inactive and invisible, and, accordingly, inaccurate and incomplete data of the URAU, the BCU violated the right of attorneys of the city of Kyiv, guaranteed by law, to participate in the self-governance of attorneys, in particular, in the election of delegates to the Congress of Attorneys of Ukraine that took place in the city of Mukachevo and the city of Kyiv from November 20, 2014 to June 16, 2015, and which elected the existing members of the HCJ and the QDCPP.

Therefore, Clauses 2 and 3 of BCU Decision No. 166, dated October 24, 2014, as regards the attendance of the conference by attorneys data on whom is included in the URAU in accordance with the Procedure for Keeping the URAU approved by the BCU and taking into account the reconciliation statement between the UNBA provided for by its clause and the Kyiv City Bar Council and information as of the date of approval of this decision by the BCU in accordance with the attached list are acknowledged by the Kyiv District Administrative Court as unlawful and subject to cancellation.

In pursuance of the decision of the Kyiv District Administrative Court, all «inactive and invisible» attorneys of Ukraine were included in the URAU once again on November 12, 2014.

For more information on issues with the URAU, please see the article «URAU Restored, but Tension Continues» in Yurydychna Hazeta [101].

Therefore:

- the Procedure for Keeping the URAU [38], approved by the BCU, provides for entering information in the URAU and making it public, which is not stipulated by Law No. 5076;
- a fee that is not provided for by Law No. 5076 is established for entering data that is not provided for thereby either in the URAU;
- court decisions that came into force contain information on repeated instances of interference with the operation of the URAU for the purpose of transferring data on certain attorneys in the state of inactive and invisible [69];
- the UNBA as the provider of information contained in the URAU, in violation of Clause 2 of CMU Resolution No. 835, dated October 21, 2015 [14], failed to ensure the publication and further updating of the database set at the official website of the URAU in accordance with the Regulation on the Database Sets, which shall be made public in the form of open data approved by the resolution.

4.7. PROFESSIONAL RIGHTS AND DUTIES AND THE GUARANTEES OF PRACTICING LAW

Professional rights of the attorney are defined in Article 20 of Law No. 5076, which provides that while practicing law, the attorney has the right to perform any actions that are not prohibited by law, the PCRB and the legal services agreement and are necessary for the proper performance thereof, in particular:

- to submit attorney's requests, including those for obtaining copies of documents, to governmental bodies, bodies of local self-government, their officials and officers, LE, and individuals (subject to the consent of such individuals);
- on the premises of enterprises, institutions and organizations, to review documents and materials necessary for the practice of law, except for those containing information with restricted access;
- to report motions and complaints during audiences with officials and officers and to obtain, in accordance with law, motivated written responses to said motions and complaints from the officials and officers;
- to be present during consideration of his or her motions and complaints at the meetings of the collegial bodies and to provide explanations regarding the motions and complaints;
- to collect information about facts that can be produced in evidence, to request for, receive, and seize objects, documents and copies thereof, to inspect them and to interrogate persons subject to their consent, in accordance with the procedure established by law;
- to apply technical means, including those used to copy materials of the case file, where the attorney provides legal defense, representation or other types of legal services, to record procedural actions in which he or she is engaged and the process of the hearing in the manner prescribed by law;
- to obtain written opinions of specialists and experts on the issues requiring special knowledge; exercise other rights stipulated by this law and other laws.

However, the application of Law No. 5076 showed a deficiency of such professional rights, in particular:

- the right to an attorney's request is substantially restricted by the inability to obtain information and documents with restricted access, which include various secrets protected by laws, as well as a low level of liability for unlawful refusal to provide information, late or incomplete provision of information, provision of inadequate information in response to an attorney's request;
- attorneys, unlike their procedural opponents, do not have the right to access most state registries;
- attorneys often have no access to the premises of the courts, the public prosecutor's office, the police, internal affairs agencies, other law enforcement agencies, institutions for pre-trial detention and execution of punishment, government authorities when his or her client is in such premises;
- the right to apply technical means is substantially restricted by the need for obtaining a permit from an official, a judge or court for the use of such technical means, etc.

The draft law on amendments to Article 212-3 of the Code of Ukraine on Administrative Offenses (regarding the tightening of liability for unlawful refusal to provide information, late or incomplete provision of information, the provision of inadequate information in response to an attorney's request, a request of the qualification and disciplinary commission of the bar, its chamber or a member in accordance with Law of Ukraine No. 7393 «On the Bar and Practice of Law»), dated December 17, 2017 [66], brought in by MP Oleksandr Suhoniako, provides for a significant increase in the fine of officials for committing said violations in accordance with Part 5 of Article 212-3.

United Nations Basic Principles on the Role of Lawyers provide for the following:

Governments shall ensure that lawyers:

- (a) Are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference
- (b) Are able to travel and to consult with their clients freely both within their own country and abroad
- (c) Shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (Clause)

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (Clause 17)

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions (Clause 18)

No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles (Clause 19)

Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority (Clause 20)

It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time (Clause 21)

Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential (Clause 22).

Law No. 5076 stipulates that the professional rights, honor and dignity of an attorney shall be guaranteed and protected by the Constitution of Ukraine, this law and other laws (Part 1 of Article 23), in particular:

- it is prohibited to interfere with or impede the practice of law;
- it is prohibited to demand disclosure of data constituting the attorney–client privilege from an attorney, an assistant attorney, attorney’s intern or a person in employment relationship with an attorney, attorney’s office, attorney company, as well as from a person whose right to practice law was suspended or terminated; none of them may be interrogated about this information except where a person who communicated the respective information has exempted the said persons from the duty to maintain the attorney–client privilege as prescribed by law;
- search operations or investigative actions that require special court permission shall be conducted in relation to an attorney on the basis of the respective court decision made upon the motion of the Public Prosecutor General of Ukraine, his or her deputies, public prosecutor of the Autonomous Republic of Crimea, oblasts or the cities of Kyiv and Sevastopol;
- it is prohibited to examine, disclose, demand procurement of or seize documents relating to the practice of law;
- attorney is guaranteed equal rights with those of other parties to the proceedings and compliance with the adversarial principle and freedom in the process of presenting evidence and proving its credibility;
- the life, health, honor and dignity of an attorney and of his or her family members and their property are under protection of the state, and any encroachments thereupon shall entail the liability established by law;
- an attorney is guaranteed the right to the measures of safety and protection in respect of him or her while he or she is participating in criminal proceedings in the manner prescribed by law;
- it is prohibited to engage an attorney in confidential collaboration during search operations or investigative actions if such collaboration relates or may lead to the disclosure of the attorney–client privilege;
- it is prohibited to interfere with private communication of an attorney and a client;
- an investigator or public prosecutor may not submit a motion concerning the legal stance of an attorney on a case; nor may a court pass a separate ruling (decision) to that effect;
- it is prohibited to interfere with the legal stance of an attorney;
- a body or officials which detained or imposed restrictive measures on an attorney should immediately give a notice thereof to the respective RBC;
- a report of a suspected criminal offense by an attorney may be made exclusively by the Public Prosecutor General of Ukraine, his or her deputy, the public prosecutor of the Autonomous Republic of Crimea, oblasts and the cities of Kyiv and Sevastopol;
- an attorney may not be brought to or threatened with criminal or any other liability in connection with the practice of law where he or she acted in accordance with law;
- none of the attorney’s statements made in the case including those reflecting the stand of the client, and none of his or her statements in media may serve as the basis for bringing the attorney to liability, unless his or her statements are in breach of the attorney’s professional duties;
- it is prohibited to identify an attorney as his or her client;
- disciplinary proceedings against an attorney shall be conducted under a specially established procedure.

Specific features of certain investigative actions and of injunctive measures in criminal proceedings against an attorney are determined in Part 2 of Article 23 of Law No. 5076.

At the same time, the mechanisms for implementing said provisions of the legislation on the bar and practice of law need polishing.

According to the 2013–2018 Report on Violation of the Rights of Attorneys and the Guarantees of Practicing Law in Ukraine, published by the UNBA on August 31, 2018 [81], the major violations of the guarantees of practicing law include the following:

- killing and endangering the attorneys' life;
- criminal prosecution of attorneys;
- physical abuse of attorneys;
- threats addressed to attorneys in connection with their professional activity;
- destruction and damage to the property owned by attorneys;
- search operations and covert investigative actions at the attorneys' premises;
- unlawful interrogations as witnesses in cases where attorneys are defense counsels;
- interference with the legal stance of an attorney in the case;
- identifying an attorney as his or her client.

According to the conclusions specified in the report, the state should ensure the implementation of the person's right to legal services and create the necessary conditions for the implementation of state guarantees for the practice of law.

The CCU stipulates criminal liability for the following:

- violation of the right to defense through a failure to provide access to a defense counsel in a timely manner, and also any other gross violation of the right of a suspected, accused or defendant to defense, if com-

mitted by an investigator, public prosecutor or judge (Article 374);

- interference with the activity of a defense counsel or legal representative of the person through impeding, in any form, access to lawful activity of a defense counsel or legal representative of the person regarding the provision of legal services or violation of the guarantees of their activity and the attorney–client privilege as prescribed by law (Article 397);
- threat of murder, violence or destruction of or damage to property owned by a defense counsel or legal representative of the person, and also their close relatives, in connection with their activity related to the provision of legal services (Article 398);
- willful destruction of or damage to property owned by a defense attorney or legal representative of the person or their close relatives, in connection with their activity related to the provision of legal services (Article 399);
- trespass against life of a defense counsel or legal representative of the person in connection with their activity related to the provision of legal services (Article 400).

However, according to authors, the dispositions of Article 397–400 of the CCU need to be clarified to extend them to any attorney's professional activity, and not only to conducting defense or providing representation.

Within the framework of the 2015–2020 Strategy for Reforming the Court Structure and Procedure as well as Those of Related Institutions of Law [12], it is provided that the legal regulation of the professional rights and duties of attorneys and of the guarantees of practicing law should be improved, effective mechanisms for bringing the officials to justice for violating the guarantees of the independence of attorneys should be introduced, and the guarantees of protecting the attorney–client privilege should be strengthened (Paragraph 7 of Sub-Clause 5.6 of Clause 5 of the Strategy).

4.8. ETHICAL STANDARDS OF PROFESSIONAL ACTIVITY

The presence and observance of ethical standards of professional conduct by attorneys is one of the generally accepted international standards for practicing law.

Under the United Nations Basic Principles on the Role of Lawyers:

- professional associations of lawyers have a vital role to play in upholding professional standards and ethics (Preamble);
- governments, professional associations of lawyers and educational institutions shall ensure that lawyers be made aware of their ethical duties (Clause 9);
- governments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with ethics (Clause 16 (c));
- in exercising their rights to freedom of expression and assembly, lawyers shall conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession (Clause 23);
- professional associations shall cooperate with governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics (Clause 25);
- all disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession (Clause 29).

The PCRБ set forth in the law of Ukraine read as follows:

- observing the PCRБ shall be one of the attorney's major professional duties (Clause of Part 1 of Article 21 of the law);

- violating the PCRБ shall be treated as a misconduct and one of the grounds for bringing such attorney to disciplinary liability (Clause 3 of Part 2 of Article 34 of the law);
- violating the PCRБ on a regular basis or committing a gross violation of the same on one occasion only (an evaluative judgment) shall be among the grounds for imposing a disciplinary penalty in the form of suspension of the right to practice law for a period of one month to one year on such attorney (Clause 3 of Part 2 of Article 31 of the law);
- violating the PCRБ on a regular basis or committing a gross violation of the same on one occasion only in a manner that undermines the authority of the bar of Ukraine (an evaluative judgment) shall be among the grounds for imposing a disciplinary penalty in the form of termination of the right to practice law on such attorney.

The PCRБ approved by the November 17, 2012 General Congress of Attorneys [24]:

- are an abridged and amended to some extent wording of the PCRБ approved by the HQCB under the CMU on October 1, 1999 [25] (14 articles were deleted):
 - the principles of honesty and decency and the culture of behavior were removed from the principles of attorney's ethics;
 - the requirements for the promotion of the practice of law are substantially reduced;
 - the list of factors that should be taken into account when determining the reasonable amount of fee, etc. was deleted;
- they were made public at the official website of the HQDBC for the first time on January 18, 2013 (more than two months after their approval);
- the consequence of the long delay in the publication of the PCRБ in 2012 was the appearance of new provisions and an additional article that were not included in the draft PCRБ put to the vote at the General Congress of Attorneys, in particular:

- criticism of activity, decisions, procedure of formation, members of the SGBA (Part 3 of Article 12);
 - imposing on the attorneys elected to the SGBA the duty to participate in the work of the SGBA, to which they are elected, to prevent actions or omissions that harm the bar association as a whole or block the work of certain SGBAs (Part 3 of Article 65);
 - the application of disciplinary measures in accordance with the procedure provided by the decisions of the congress, documents of the BCU, UNBA, determination of the body conducting disciplinary proceedings in relation to the attorney who is a member of the SGBA and according to complaints of those attorneys who are members of the SGBA (Part 1 and 2 of Article 66);
 - the PCRB are interpreted by the Congress of Attorneys of Ukraine and the BCU (Article 5), and not HQDBC, as it should be, since it is the HQDBC, according to Clause 2 of Part 4 of Article 52 of the law, that summarizes the disciplinary practices of the QDCB.
- attorney's conduct in the disciplinary proceedings of the QDCB was deleted in the preamble;
- the following provisions were deleted in the clause stating the principle of independence and freedom of an attorney in the practice of law (Article 6):
 - Part 3 stating that «An attorney shall not allow compromises in his or her professional activity that would affect his or her independence to please the court, other government authorities, third parties or the client, if such compromises are in conflict with the legitimate interests of the client and impede the proper practice of law;»
 - Part 4 stating that «An attorney shall not be engaged in any other activity that would make him or her somehow dependent on other persons or make him or her dependent on instructions or rules that may be in conflict with the provisions of the existing legislation on the bar or practice of law, these rules, or may otherwise impede his or her free and independent practice of law;»
 - Part 5 stating that «An attorney shall not share his or her fee received from his or her client with other persons other than the attorney who previously carried out the commission and successors of the deceased attorney, the partially carried out commission of whom he or she took over,» and establishing the alternative rule, in accordance with which «an attorney may share his or her fee with other persons unless it is prohibited by the legislation on the bar and practice of law;»

The newly restated PCRB of June 9, 2017 [23]:

- a lack of transparency in the development of the PCRB in 2017 (the working group consisted of seven persons, there was no extensive discussion with attorneys and scholars, the concept of changes, the purpose and means of their implementation were not agreed on, the draft was not made public, not was it presented to the delegates of the congress on the date of voting;
- questionable legitimacy of the PCRB as amended in 2017 due to the lack of a quorum during the voting process (112 votes out of 143 votes required);
- the publication of the newly restated PCRB on July 18, 2017 (on the 40th day upon approval) after receiving attorneys' requests for the PCRB and responding that the text was not ready yet;
- the provision that the PCRB should establish a unified system of criteria for assessment of the ethics of an attorney's conduct in the disciplinary proceedings of the QDCB was deleted in the preamble;
- the role of the UNBA in ensuring the independence of an attorney was changed (Part 5 of Article 6);
- the principle of dominance of client's interests to the priority of client's interests was renamed (Article 8);
- the principle of the inadmissibility of conflict of interest (Part 1 of Article 9) was not formulated in accordance with the generally accepted international standards;
- Article 31 «Restrictions on Property Agreements Between an Attorney and a Client» was deleted;
- FSLA attorneys were prohibited from entering into

an engagement agreement to provide professional lawyer's (legal) aid to the same client in the same proceedings, and under the same or related circumstances in which such attorneys were engaged to provide FSLA services;

- a number of provisions on relations with the court and peculiarities of an attorney's conduct during the trial (Article 42) were deleted and replaced with the reference rule in the procedural legislation and the legislation on the judicial system and the bar, which do not provide for any ethical standards of professional conduct;
- the principle of collegiality in the relationships between attorneys was deleted (Part 1 of Article 50);
- the BCU and UNBA were authorized to establish the principles of practice of law (Part 1 of Article 50), contrary to Clause 14 of Article 92 and Part 3 of Article 131–2 of the Constitution of Ukraine;
- the procedure of attorney's response to unlawful or unethical actions of a colleague became more complicated and applying to the RBC prior to applying to the QDCB was made mandatory (Part 3 and 4 of Article 52);
- a new section was added with regard to compliance with the PCRB on the Internet, the provisions of which stipulate the following:
 - establishing significant restriction of an attorney's freedom of expression in social networks and dissemination of information on the Internet;
 - determining the admissibility of the participation of an attorney in social networks based entirely on a judgment and depending on a discretion of the bodies authorized to interpret the PCRB and the disciplinary powers vested in them (Part 1 of Article 57);
 - determining the possibility of establishing additional professional duties of an attorney by the decisions of the congress and the BCU (Part 2 of Article 57) contrary to Article 21, Part 7 of Article 54 and Part 4 of Article 55 of the law;
 - introducing 10 principles of the use of social networks by attorneys, Internet forums and other

forms of communication on the Internet, which, in their majority, are not in compliance with the principles of the PCRB, and which the attorney must adhere to in real life and other relations (Part 3 of Article 57);

- Part 2, 3, and 4 of Article 70 of the PCRB, which define a constitutional principle of presumption of innocence, covered by Part 7 of Article 70 of the PCRB.

Therefore, the PCRB of November 17, 2012 and the restated PCRB of June 9, 2017 were developed and adopted without being widely discussed with attorneys and scholars and without agreeing on the concept of the changes to be made, the goal and means of their implementation. Certain PCRB provisions were deleted and replaced without relevant reasons and explanations provided to show the bar community why they were necessary. The fact that the PCRB were amended by incorporating additions after the PCRB had been adopted at the November 17, 2012 Constituent Congress of Attorneys of Ukraine and the newly restated PCRB had been adopted at the June 9, 2017 General Congress of Attorneys of Ukraine without the necessary quorum set by Law No. 5076 may substantially impact the legitimacy of the PCRB and the consequences of their application in disciplinary and court proceedings.

Authors believe that the newly restated PCRB need being more thoroughly analyzed for compliance with the generally accepted international standards of practicing law.

4.9. DISCIPLINARY LIABILITY AND PRACTICES

Bringing the attorney to administrative liability is governed by Section VI of Law No. 5076 that has a number of gaps, in particular, such as follows:

- the absence of the definition of a misconduct in the law;
- the existence of such a kind of misconduct as violation of the oath of attorney of Ukraine as universal grounds for bringing the attorney to disciplinary liability (Clause 1 of Part 2 of Article 32, Clause 2 of

Part 2 of Article 34 of Law No. 5076);

- persons who may submit an application (complaint) about the actions of an attorney are not defined;
- the absence of legally defined requirements to the form and content of application (complaint), which may result in the disciplinary liability of the attorney;
- a very short list of disciplinary penalties (Part 1 of Article 35 of Law No. 5076), which does not allow to ensure compliance with the principle of proportionality when choosing the type of disciplinary penalty;
- the existence of such a disciplinary penalty as suspension of the right to practice law for a period from one month to one year (Clause 2 of Part 1 of Article 35 of Law No. 5076), the application of which significantly affects the violation of the rights of attorneys' clients;
- the time frame for bringing the attorney to disciplinary liability commences with the date of misconduct and does not take into account the date of its detection (Part 2 of Article 35 of Law No. 5076);
- the existence of evaluative judgments, such as «violation of the rules of professional conduct, which compromises the authority of the bar of Ukraine» as the grounds for applying the most severe disciplinary penalty (Clause 4 of Part 2 of Article 34 of Law No. 5076);
- an incomplete list of stages of disciplinary proceedings (Part 1 of Article 37 of Law No. 5076);
- the absence of the provision that while choosing the type of disciplinary penalty against the attorney, the nature of misconduct, its consequences, personality of the attorney, degree of his or her guilt, availability of outstanding disciplinary penalties, circumstances that affect the possibility of bringing the attorney to disciplinary liability are taken into account;
- the presence of the provision that appealing against the decision in a disciplinary action does result in its suspension (Part 1 of Article 42 of Law No. 5076);

- the absence of the mechanism of canceling and early withdrawal of disciplinary penalties;
- the HQDBC is not authorized to officially interpret the rules of professional conduct (Part 4 of Article 52 of Law No. 5076).

In addition to the aforesaid shortcomings of Law No. 5076, the danger of violation of the rights of attorneys is the attempt of the BCU to expand the statutory list of grounds for disciplinary liability (Part 2 of Article 34 of Law No. 5076) and to unreasonably change the jurisdiction over disciplinary cases specified by law (Part 3 of Article 33 of Law No. 5076).

In accordance with Sub-Clause 2.16 of the Regulation Regarding Fees to Ensure the Implementation of the Self-Governance of Attorneys (restated) approved by BCU Decision No. 72 of February 16, 2013 [31] as amended (hereinafter referred to as the «Regulation on Fees»), violation by an attorney of the procedure and terms of payment of annual fees is considered to be a failure to comply with the decision of the SGBA and, accordingly, is considered a misconduct.

Imposing a disciplinary penalty on an attorney in the form of suspension of the right to practice law for a period from one month to one year may only be applied if there are grounds specified in Part 2 of Article 31 of Law No. 5076. However, according to Sub-Clause 2.18 of the Regulation on Fees, in the event of violation by the attorney of the procedure for payment of annual fees and/or delay in payment of such fees, as established by the Regulation on Fees, for a period of more than three months, the attorney, as requested by the BCU or the regional bar council, shall be subject to a disciplinary penalty in the form of suspension of the right to practice law for a period from one month to one year. Imposing a disciplinary penalty on an attorney in the form of termination of the right to practice law may only be applied if the grounds provided for in Part 2 of Article 32 of Law No. 5076 are found.

In accordance with Sub-Clause 2.20 of the Regulation on Fees, if the attorney still fails to make payments and/or violates the procedure of payment of annual fees within one year after the expiry of the time frame of the disciplinary penalty in the form of suspension of the right to practice law, such attorney may be subject to disciplinary

penalties in the form of termination of the right to practice law and his subsequent exclusion from the URAU.

Obviously, Sub-Clauses 2.18 and 2.20 of the Regulation on Fees contradict the provisions of Part 2 of Article 31 and Part 2 of Article 32 of Law No. 5076, which provide for the application of disciplinary penalties in the form of suspension of the right to practice law for a period from one month to one year and termination of the right to practice law only in the event of the misconducts listed in the above articles of Law No. 5076.

The conclusion that the procedure for bringing the attorney to disciplinary liability is established by law, and it is set out, in particular, in the decision of the Ternopil Oblast Court of Appeal in Case No. 607/3128/16-c, dated August 12, 2016 [69].

In accordance with Sub-Clause 2.19 of the Regulation on Fees, properly sending the attorney a letter of notification of the initiation of a disciplinary case against the attorney on the grounds of violation of the procedure of payment (non-payment, non-payment in full, delay in payment) of the annual fee to ensure the implementation of the self-governance of attorneys, its consideration and decision-making regarding the initiation of the disciplinary case provides, inter alia, for sending such information to the attorney's email address specified in the URAU or posting relevant information at the official website of the UNBA, which obviously violates the provisions of Part 2 of Article 39, Part 2 of Article 40, and Part 3 of Article 41 of Law No. 5076.

Bringing the attorney to disciplinary liability is also governed by the Regulation Regarding the Procedure of Receipt and Consideration of Complaints in Respect of the Attorney's Misconduct That May Result in His or Her Disciplinary Liability, approved by BCU Decision No. 120 of August 30, 2014 as amended [37]. Certain provisions of said regulation (Clause 22 and 23) directly contradict Part 3 of Article 33 of Law No. 5076 in terms of the definition of the QDCB that conducts disciplinary proceedings against the attorney.

According to Draft Law No. 6495 «On Amendments to the Law of Ukraine «On the Bar and Practice of Law», dated May 24, 2017, (with respect to bringing the definitions of the terms used in the law into line with the re-

quirements of the existing legislation and suspension of the entry into force of decisions of the qualification and disciplinary commissions of the bar on imposing disciplinary penalties on attorneys as a result of appeal against such decisions) [63], brought in by MPs Oleh Liashko, Tetiana Yuzkova, Oleh Kuprienko, it is proposed amending Part 1 of Article 42 of Law No. 5076 to stipulate that the appeal against the decision on disciplinary liability should suspend its operation.

The explanatory note to the draft law states that analysis of provisions of Articles 35, 41, 42 of Law No. 5076 gives reason to take up the position that the decision of the QDCB to impose disciplinary penalties on the attorney in the form of suspension of the right to practice law for a certain time period or termination of the right to practice law, which comes into force immediately after approval, is inconsistent with the requirements of Articles 8, 55, 59, and 1312 of the Constitution of Ukraine.

The disciplinary practice of the QDCB and HQDCB was the subject matter of international experts, whose findings are provided in the Report on the Results of the July 10–12, 2013 Facts Verification Visit of the CCBE Delegation [86] and the Report of the International Commission of Jurists on the Results of the June 20–22, 2014 Visit [87].

In particular, in said reports, international experts pointed out that the disciplinary penalties imposed on attorneys, including termination of the right to practice law, were imposed for actions that had nothing to do with the practice of law.

The practice of bringing attorneys to disciplinary liability is common::

- for the participation or non-participation in the work of the SGBA, to which they were elected;
- for the criticism of the activity of the SGBA;
- for the activity that has nothing to do with the practice of law, etc.

In the professional environment, the case of attorney Andrii Vyshnevskiy evoked a wide response. Upon the complaint lodged by Lidia Izovitova, head of the UNBA

and BCU, the Kyiv Oblast QDCB suspended Vyshnevskyi's right to practice law and subsequently excluded the attorney from the URAU for his critical statements about the negative phenomena observed in the bar which he made while speaking in public with the report «The Bar and Free Legal Aid: Ways of Reforming» at a conference organized by the JRC at the premises of the SCU on June 15, 2015. In particular, the grounds for the termination of the right to a profession were the following statement by Andrii Vyshnevskyi: «If the bar is not reformed within the shortest time possible in accordance with the principles and standards of the CoE, it may become a barrier to the implementation of the judicial reform.»

Based on the decision of the Administrative Court of Appeal as part of the Supreme Court, dated March 14, 2018 [70], the decision of the Kyiv QDCB in respect of bringing attorney Andrii Vyshnevskyi to disciplinary liability in the form of termination of the right to practice law was found to be unlawful and canceled.

Disciplinary proceedings regarding certain attorneys are conducted by the QDCB not at the attorney's place of work address indicated in the URAU, as provided for in Part 3 of Article 33 of the law.

BCU Decision No. 23 of September 2017 [42] established a fee for the provision of organizational and technical support while considering applications (complaints) regarding the attorney's misconduct that may be grounds for disciplinary liability, complaints against decisions of the disciplinary chambers of the QDCB, complaints against actions or omissions on the part of the QDCB in the amount of one subsistence minimum for able-bodied persons established by law on the date of application (complaint), which, according to authors, significantly restricted access to disciplinary proceedings for people who become aware of the attorney's misconduct. Also, said decision was very negatively perceived by experts of the CoE, which is seen in the Report on the Needs Assessment Conducted in Respect of the Self-Governance of Lawyers in Ukraine as Part of the Consolidating Ukraine's Justice Sector Reform Project, implemented by the Council of Europe in 2017–2018 [93].

The HQDBC report (2012–2017) [84] does not provide the opportunity to fully understand the trends in the disciplinary practice of the QDCB and HQDBC. At the HQDBC website, there is no consolidation of the disciplinary practice of the QDCB (Clause 2 of Part 4 of Article 52 of Law 5076). Regarding the issues of bringing the attorney to disciplinary liability, the following decisions of the HQDBC are important:

- Applying Time Frames to Bringing the Attorney to Disciplinary Liability in the Course of Disciplinary Proceedings, dated October 28, 2016 [46];
- On the Practice of Applying Disciplinary Penalties in the Form of Suspension of the Right to Practice Law, dated March 1, 2018 [45].

According to authors, the problem is the closed nature of disciplinary practice in society, in particular:

- the publication of decisions of disciplinary bodies in the impersonal form;
- the absence of the system of finding solutions on disciplinary matters on the official websites of the QDCB and HQDBC;
- the absence of analysis and consolidation of the disciplinary practice of the QDCB and HQDBC on a regular basis to improve the practice of law.

As part of the implementation of the 2015–2020 Strategy for Reforming the Court Structure and Procedure as well as Those of Related Institutions of Law, it is provided that the grounds for bringing the attorney to disciplinary liability should be specified, the rules applicable to disciplinary proceedings regarding the attorney should be improved, and the types of penalties that may be applied to the attorney should be differentiated (Paragraph 4 of Sub-Clause 5.6 of Clause 5 of the Strategy).

4.10. BUDGETING AND FINANCE

According to Law No. 5076, the SGBA may be financed through:

- the fee for taking the qualification exam;
- the annual fee payable by the attorneys for ensuring the implementation of their self-governance;
- the deductions payable by the QDCB for ensuring the operation of the HQCB;
- the voluntary contributions made by the attorneys, AOs, and ACs;
- the voluntary contributions made by individuals and legal entities;
- other sources not prohibited by law (Part 1 of Article 58).

Figure 5.

**PAYMENT OF THE ANNUAL FEE FOR ENSURING
THE IMPLEMENTATION OF ATTORNEYS' SELF-GOVERNANCE**

Oblast	Total number of attorneys in the URAU	Number of certificates suspended/terminated/canceled	Number of attorneys in the URAU disregarding those whose certificates have been suspended/terminated/canceled	Number of Notes Made to Certify the Payment of the UNBA Fee for 2018		Percentage of Notes Made to Certify the Payment of the UNBA Fee for 2018	
	Male	Male	Male	Male	%	Male	%
Autonomous Republic of Crimea	1414	563	851	7	0.8%	0	0%
Vinnitsia Oblast	858	207	651	395	60.7%	57	8.8%
Volyn Oblast	868	293	575	438	76.2%	497	86.4%
Dnipropetrovsk Oblast	2815	386	2429	1464	60.3%	1504	61.9%
Donetsk Oblast	3529	1112	2417	428	17.7%	595	24.6%
Zhytomyr Oblast	707	257	450	388	86.2%	99	22.0%
Transcarpathian Oblast	967	303	664	295	44.4%	332	50.0%
Zaporizhia Oblast	1711	547	1164	890	76.5%	1141	98.0%
Ivano-Frankivsk Oblast	1075	353	722	371	51.4%	384	53.2%
Kyiv Oblast	5173	721	4452	2340	52.6%	0	0.0%
Kirovohrad Oblast	578	150	428	322	75.2%	400	93.5%
Luhansk Oblast	659	107	552	145	26.3%	34	6.2%
Lviv Oblast	2646	771	1875	933	49.8%	1020	54.4%
Mykolayiv Oblast	1026	178	848	455	53.7%	88	10.4%
Odesa Oblast	2802	578	2224	1270	57.1%	0	0.0%
Poltava Oblast	1804	551	1253	664	53.0%	924	73.7%
Rivne Oblast	1000	394	606	480	79.2%	476	78.5%
Sumy Oblast	459	134	325	265	81.5%	331	101.8%
Ternopil Oblast	756	249	507	317	62.5%	402	79.3%
Kharkiv Oblast	2275	475	1800	1344	74.7%	1303	72.4%
Kherson Oblast	575	86	489	218	44.6%	263	53.8%
Khmelnytskyi Oblast	790	421	369	384	104.1%	460	124.7%
Cherkasy Oblast	847	214	633	388	61.3%	523	82.6%
Chernivtsi Oblast	805	311	494	446	90.3%	514	104.0%
Chernihiv Oblast	633	120	513	284	55.4%	41	8.0%
Kyiv	4821	299	4522	1528	33.8%	0	0.0%
Sevastopol	280	45	235	3	1.3%	0	0.0%
Total/Average	41873	9825	32048	16462	51.37%	11388	35.53%

Figure 6.

Percentage of Notes Made to Certify the Payment of the UNBA Fee for 2018

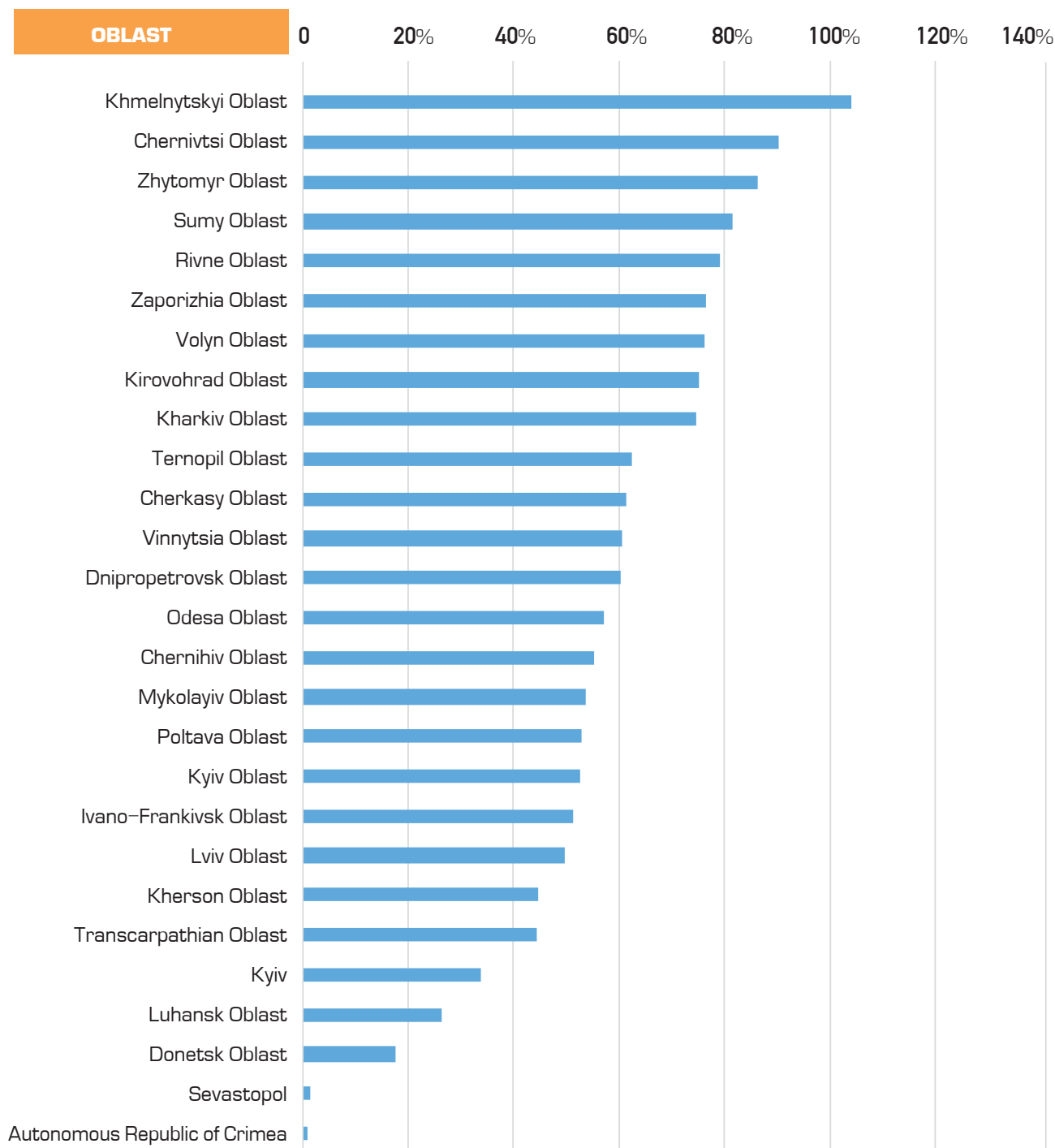
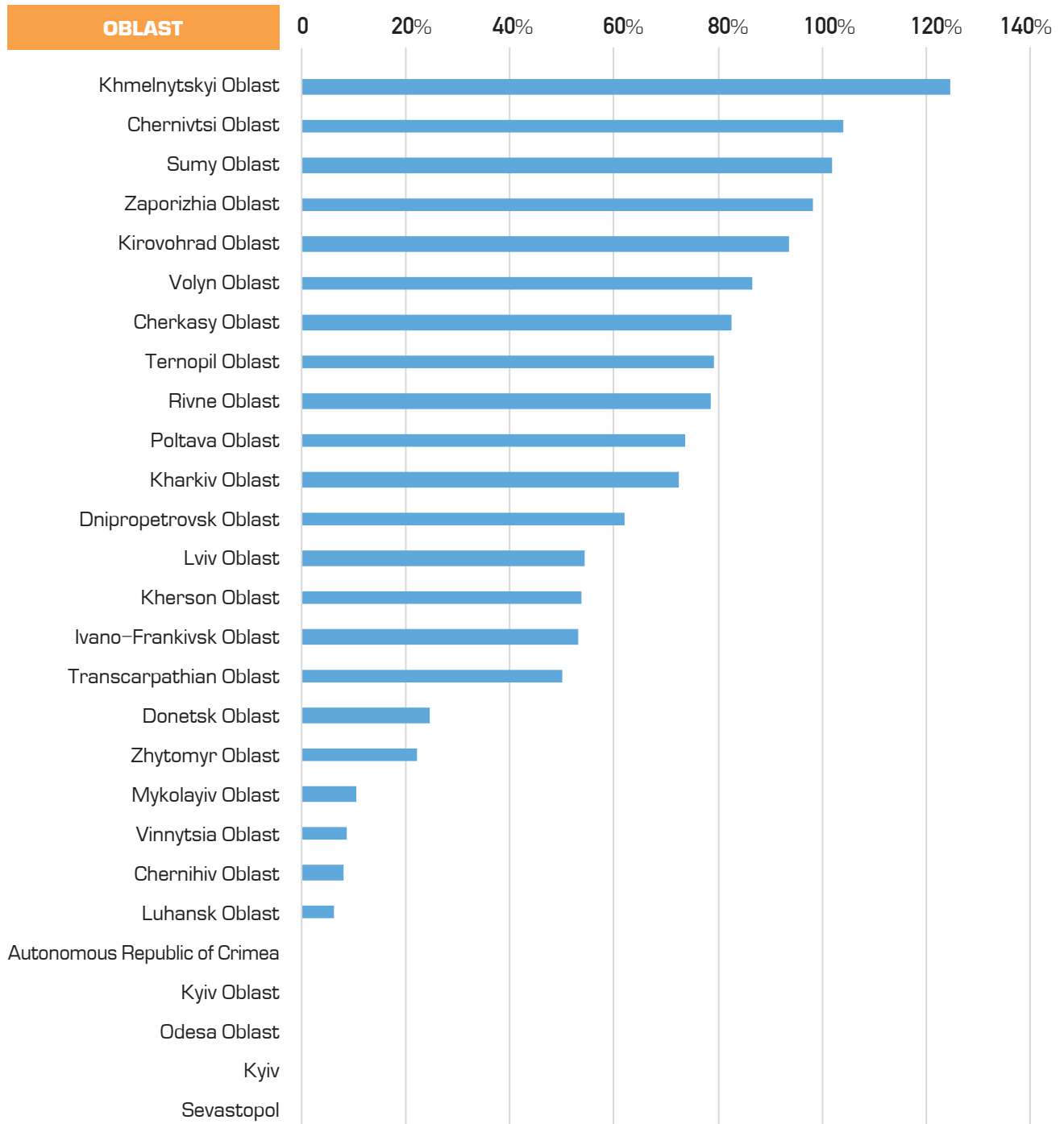


Figure 7

Percentage of Notes Made to Certify the Payment of the RBC Fee for 2018



Law No. 5076 as amended on July 5, 2012 stipulates that a rate of attorneys' annual fees for ensuring the implementation of attorneys' self-governance is determined taking into account the need to cover the cost of operation of the RBC, BCU, HACB and the cost of maintaining the URAU (Part 2 of Article 58).

The SGBA should be financed and their funds and property should be administered in accordance with the budgets approved by regional conferences of attorneys and the Congress of Attorneys of Ukraine (Part 3 of Article 58 of Law No. 5076, dated July 5, 2012).

According to Law No. 5076, determining the amount of, and procedure for, the payment of annual fees falls within the powers of the BCU (Clause 6 of Part 4 of Article 55).

BCU Decision No. 24 of December 17, 2012 [111] establishes the annual fee for ensuring the implementation of attorneys' self-governance at a rate of one minimum wage. At the same time, the General Congress of Attorneys did not approve the budgets of the BCU and HQDBC, nor did it take into account the need to cover the cost of operation of the RBC, BCU, and the HACB. Consequently, BCU Decision No. 24 of December 17, 2012 was approved without any good reason in gross violation of Part 2 and 3 of Article 58 of Law No. 5076.

According to the UNBA Report for 2017 [80], a total of 37% of Ukrainian attorneys did not pay annual fees for ensuring the implementation of their self-governance in 2017. A similar figure of non-payment of the annual fees (37%) is given in the UNBA Report for 2016. As of May 29, 2018, more than 49% of attorneys of Ukraine did not pay the UNBA annual fees to ensure the implementation of attorneys' self-governance (See Figures 6–7). According to authors, a failure to pay the annual fees by a large part of attorneys of Ukraine may point to a low level of trust of attorneys towards the UNBA and SGBA, poor performance of service functions by the UNBA and SGBA with respect to the protection of attorneys' professional rights, the guarantees of practicing law, representation of their interests, continuing education and maintaining the professional level of attorneys.

Law No. 5076 does not provide for empowering the Congress of Attorneys of Ukraine or any other SGBA to establish any additional fees or payments. However, while

abusing the powers set forth by Law No. 5076 and acting contrary to the UNBA status as that of a non-profit organization, the BCU adopted a decision establishing the following:

- the one-off fee for ensuring the implementation of attorneys' self-governance in terms of organizational and technical support for the QDCB and HQDBC payable by attorneys of foreign states at a rate of 10 minimum wages (BCU Decision No. 156 of June 1, 2013) [49];
- the annual fee for ensuring the implementation of attorneys' self-governance in Ukraine payable by attorneys of foreign states at a rate of 20 minimum wages (BCU Decision No. 157 of June 1, 2013);
- the fee for entering assistant attorney data in the URAU payable at a rate of 50% of one minimum wage (Sub-Clause 3.5.13 of Clause 4.3 of the Assistant Attorney Terms of Reference, adopted on the basis of BCU Decision No. 113 of September 25, 2015 (as amended) [36];
- the fee for taking an internship payable at a rate of 12 monthly minimum wages (BCU Decision No. 292 of December 2016) [29];
- the payment (fee) for processing, entering, and posting additional data available in the attorney's profile (at his or her discretion) in the URAU database at the official website of the UNBA (BCU Decision No. 191 «The Issue of Organizational Support for Keeping the Unified Register of Attorneys of Ukraine», dated September 22, 2017 [56]);
- the logo and/or name of the website of the AC or AO through which such attorney practices law – at a rate of 50% of the minimum wage as at the date of submission of such information to the RBC;
- categories of cases conducted by such attorney (not more than 10 categories) – at a rate of 50% of the minimum wage as at the date of submission of such information to the RBC;
- awards, honorary titles, honors, etc. – at a rate of 50% of the minimum wage as at the date of

submission of such information to the RBC;

- the fee for the provision of organizational and technical support while considering applications for accreditation of advanced training activities for attorneys and of the organizers thereof payable at a rate of three minimum wages (BCU Decision No. 194 of September 22, 2017 [57]);
- the fee for the provision of organizational and technical support while considering applications (complaints) regarding the attorney's misconduct that may serve as grounds for disciplinary liability, complaints against decisions of the disciplinary chambers of the QDCB, and complaints against actions or omissions on the part of the QDCB in the amount of one subsistence minimum for able-bodied persons established by law on the date of application (complaint) (BCU Decision No. 203 of September 23, 2017 [42]).

Law of Ukraine No. 1791–VIII, dated December 20, 2016 [17], established limits for:

- the fee for taking internship – not more than three minimum wages as of the date the person submits an application for the appointment of an internship (Clause 2 of Part 4 of Article 10 of Law No. 5076) and an additional fee of not more than 0.5 of the minimum wage in the event of prolongation of the internship, according to the RBC decision (Part 9 of Article 10 of Law No. 5076);
- the fee for taking the qualification exam – not more than three subsistence minimums for able-bodied persons established by law on the date the person submits an application for admission to the qualification exam (Clause 1 of Part 2 of Article 58 of the Law);
- the annual fee for ensuring the implementation of attorneys' self-governance – not more than one subsistence minimum for able-bodied persons established as of January 1 of the corresponding calendar year (Paragraph 2 of Part 2 of Article 58).

By making the fee for taking the qualification exam a single source of financing the QDCB and HQDBC, Law No. 5076 does not provide for the financial stability of the operation

of the QDCB and HQDBC, making them potentially dependent on the BCU and RBC, which does not meet international standards. The financial statements of the SGBA are made public annually in accordance with the procedure approved by the BCU (Part 4 of Article 58).

The procedure for making the financial statements of attorneys' self-governing bodies public was approved by BCU Decision No. 253 of December 17, 2013 [40]. The reliability of the annual financial statements of the national SGBA should be annually verified by an independent auditor.

However, according to authors, the financial statements of the SGBA need to be more specific and should reflect:

- the structure of receipts and expenditures with their itemized presentation;
- the subject matter, purpose, parties, and progress status of each agreement entered into for an amount in excess of the limit established by the Congress of Attorneys of Ukraine, or the counterparty with which agreements are entered into for an amount in excess of the established limit during the reporting year;
- the number of workers hired and their positions, the salary attached to the positions, and the amount of payable and paid-up wages;
- in attorneys' opinion, the reliability of the annual financial statements of the national SGBA should be annually verified by an independent auditor.

Therefore:

- contrary to the powers established by Law No. 5076 and the non-profit status of the UNBA, the BCU has been continuously adopting decisions to establish new mandatory fees and payments that are not provided for by law and that, in fact, constitute payments for the provision of services;
- the financial statements of the SGBA need more transparency and their reliability should be verified by an independent auditor.

4.11. PRACTICE OF LAW IN UKRAINE BY ATTORNEYS OF FOREIGN STATES

The system of admission of foreign attorneys to practicing law in the territory of Ukraine is implemented in pursuance of the recommendations of European experts of the EU–CoE Transparency and Efficiency of the Judicial System of Ukraine Joint Program (Expert Opinion on the Draft Law of Ukraine «On the Bar», dated October 13, 2009), as well as of the Venice Commission and the Directorate for Justice and Human Dignity under the Directorate General for Human Rights and Rule of Law of the CoE (Joint Opinion on Draft Law of Ukraine No. 632/2011 «On the Bar and Practice of Law», dated October 18, 2011).

According to Articles 59–61 of the law, the attorney of a foreign state in Ukraine:

- shall submit an application for his or her inclusion in the URAU and documents in accordance with the list approved by the UNBA to the QDCB;
- may enjoy the professional rights and duties, and the guarantees of practicing law as those of the attorney of Ukraine while practicing law;
- shall practice law using the legal forms stipulated by law;
- may be subjected to disciplinary liability in the form of warning or exclusion from the URAU in the event of misconduct;
- may not participate in the work of the SGBA, nor may he or she be elected to the SGBA;
- may apply to the SGBA for the protection of his or her professional rights and duties, participate in educational and training activities conducted by the QDCB, HQDBC, RBC, BCU, and the UNBA.

As regards the practice of law in Ukraine by attorneys of foreign states, the law:

- uses a cumbersome term – the attorney of a foreign state, which meaning is not provided for by law;
- does not provide for any restrictions as to the types of

practice of law that may be performed by the attorney of a foreign state in Ukraine;

- does not establish any requirements with regard to a command of the official language and knowledge of the Ukrainian legislation to practice law in Ukraine for attorneys of foreign states;
- does not provide for any payments for entering their data and its preservation in the URAU.

Entering the personal data of the attorney of a foreign state in the URAU is performed in accordance with the Regulation on the List of Documents and the Procedure for Inclusion of the Attorney of a Foreign State into the URAU approved by BCU Decision No. 155 of June 1, 2013, [35]. Some of the provisions of said regulation with regard to the rights and duties of the attorney of a foreign state do not comply with the existing law, in particular, with regard to:

- the right to provide legal services in the territory of Ukraine only on issues of international law and the legislation of the state in which he or she acquired the right to practice law;
- the right to represent clients in Ukrainian courts of all levels only in liaison with an attorney of Ukraine;
- the duty to pay the one-off fee to the account of the corresponding QDCB for ensuring the implementation of attorneys' self-governance with regard to organizational and technical support of the QDCB and HQDBC in the amount established by the decision of the BCU;
- the duty to pay the annual fees to the account of the corresponding RBC for ensuring the implementation of attorneys' self-governance in Ukraine in the amount established by the decision of the BCU;
- the duty to make the first payment of said annual fee within three days of inclusion of his or her personal data into the URAU.

The following is established by BCU Decision No. 156 [49] and BCU Decision 157 [50] of June 1, 2013, respectively, for attorneys of foreign states:

- the one-off fee for ensuring the implementation of at-

attorneys' self-governance in terms of organizational and technical support of the QDCB and HQDBC payable at a rate of 10 minimum wages;

- the annual fee for ensuring the implementation of attorneys' self-governance in Ukraine payable at a rate of 20 minimum wages.

Information on the number and personal identities of attorneys of foreign states who acquired the right to practice law in Ukraine is not available to the general public through the URAU.

4.12. OBSERVING ATTORNEYS' RIGHTS IN THE OCCUPIED TERRITORIES OF THE AUTONOMOUS REPUBLIC OF CRIMEA, THE CITY OF SEVASTOPOL, AND DONETSK AND LUHANSK OBLASTS

Autonomous Republic of Crimea and the City of Sevastopol

Violation of the rights of attorneys of Ukraine in the Autonomous Republic of Crimea is attributed to granting the Russian Federation citizenship on a compulsory basis and the illegal extension of the legislation of the Russian Federation to the territory of the Autonomous Republic of Crimea and the city of Sevastopol. In 2014–2015, the Russian occupation authorities introduced a system of re-registration of attorneys in the Crimea, which suggested obtaining the status of an attorney according to the legislation of the Russian Federation. A list of attorneys of the so-called Republic of Crimea who wish to pursue their professional activity in accordance with the legislation of the Russian Federation was formed. At the same time, attorneys who refused to take the qualification exam according to the legislation of the Russian Federation, in fact, were denied the right to practice law in the Autonomous Republic of Crimea and the city of Sevastopol. On April 18, 2014, a constituent meeting was held in the city of Sevastopol, and on April 19, 2014, a constituent meeting was held in the territory of the Autonomous Republic of Crimea, which resulted in setting up the chambers of attorneys of the city of Sevastopol and the so-called Republic of Crimea.

As of May 29, 2018, there was data on 1,414 and 280 attorneys in the Autonomous Republic of Crimea and the city of Sevastopol, respectively, in the URAU. At the same time,

there were no notes made in the URAU regarding the suspension or termination of the right to practice law of 851 attorneys of the Autonomous Republic of Crimea and 235 attorneys of the city of Sevastopol. As of May 1, 2018, a total of 918 and 263 attorneys (of the Autonomous Republic of Crimea and the city of Sevastopol, respectively) were registered in the Crimean Bar Association under occupation, taking into account those who came to the Autonomous Republic of Crimea from the Russian Federation.

Since the occupation began, the UNBA has made no statements regarding the protection of the professional rights of the attorneys of the Autonomous Republic of Crimea and the city of Sevastopol and the guarantees of practicing law by such attorneys. Also, the UNBA still has not made any judgements about the actions of certain Ukrainian attorneys who were fully engaged in the establishment of so-called self-governing bodies of attorneys of the so-called Republic of Crimea and the city of Sevastopol.

So far, the SGBAs of the Autonomous Republic of Crimea and the city of Sevastopol have not resumed their operations in the controlled territory of Ukraine. In this regard, the Crimean attorneys who arrived in mainland Ukraine and who are not registered in the UNBA of other regions are denied the opportunity to practice law and participate in the activity of the SGBA of the Autonomous Republic of Crimea and the city of Sevastopol. In addition, the location of the registered office of the SGBA of the Autonomous Republic of Crimea at the official website of the UNBA is the address at which the illegal Chamber of Attorneys of the Republic of Crimea is registered. There is no information about the head and the manning table of the BC of the Autonomous Republic of Crimea and the manning table of the BC of the city of Sevastopol at the UNBA website. The official websites of the Autonomous Republic of Crimea and the BC of the city of Sevastopol are not operational.

A working group to study matters regarding the status of professional rights of attorneys of Ukraine and the guarantees of their activity in the territory of the Autonomous Republic of Crimea and the city of Sevastopol was set up according to BCU Decision No. 27 «On Setting Up a Working Group to Examine the Status of Rights of Attorneys of the Autonomous Republic of Crimea,» dated April 2, 2014; however, the UNBA website does not provide any information on the progress and outcomes of the activity of the working group.

One of the decisions of the Third Congress of Attorneys of Ukraine held in Odesa on July 2–3, 2015 provided for the resumption of operation of the BC of the Autonomous Republic of Crimea in the city of Kherson. However, said decision was not implemented.

According to the UNBA Report for 2017 [80], no regional conferences of attorneys were held in the Autonomous Republic of Crimea and the city of Sevastopol to elect delegates to the General Congress of Attorneys that took place on June 9, 2017. The Report does not provide any information about the operation of the SGBA of the Autonomous Republic of Crimea and the city of Sevastopol.

According to the 2018 Schedule of Professional Development Workshops and Training Sessions, the SGBA does not plan to conduct any professional development activities for attorneys of the Autonomous Republic of Crimea and the city of Sevastopol.

Notably, as of May 29, 2018, only seven attorneys from the Autonomous Republic of Crimea out of 851 attorneys registered in the URAU, and three attorneys from the city of Sevastopol from among 235 attorneys registered in the URAU, paid the UNBA part of the annual fees to ensure the implementation of attorneys' self-governance in 2018. At the same time, none of the attorneys of the Autonomous Republic of Crimea and the city of Sevastopol paid the other part of the annual fees to the BC of the Autonomous Republic of Crimea and the BC of the city of Sevastopol. Apparently, this does not reflect the real number of attorneys of the Autonomous Republic of Crimea and the city of Sevastopol who practice law in mainland Ukraine since most of them were forced to re-register in other regions, because the UNBA failed to ensure the resumption of operation of the BC of the Autonomous Republic of Crimea and the BC of the city of Sevastopol in the territory controlled by Ukraine. As a result of such a lack of action, there is no objective data on the number of attorneys who conduct their professional activities in the territory controlled by Ukraine.

At the same time, there are recorded acts of cracking down on attorney Emil Kurbedinov, Edem Semedliaiev, Mamet Mambetov, Mykola Polozov and others in the Autonomous Republic of Crimea and the city of Sevastopol. There is no information on any response to these facts on the part of the SGBA at the national level in open sources.

ORDLO

In June 2016, it became known from open sources that the terrorist organization of the Donetsk People's Republic had set up its own register of attorneys. Relevant statements were published at the website of the so-called Ministry of Justice of the DNR. Information on the establishment of the Unified Register of the DNR Attorneys was posted at the website of the Council of the DNR Attorneys.

After reviewing and analyzing the information that is publicly accessible, in particular, at the websites of the DNR structural divisions, it turned out that 317 Ukrainian attorneys were included in the so-called Unified Register of the DNR Attorneys and they are engaged in the activity of the terrorist organization of the DNR.

Data on two members of the Donetsk Oblast BC – Iryna Markova and Mykola Karakash, and attorney of Ukraine Olena Radomska, who was appointed Minister of Justice of the DNR, was entered in the register among others.

In accordance with the Procedure for Keeping the Unified Register of Attorneys of the DNR approved by Order No. 247 of the Ministry of Justice of the DNR, dated March 30, 2016, all data contained in the register is provided by attorneys on a voluntary basis. At the same time, according to the information on this website, attorneys who are put on the list of attorneys of the DNR are obliged to be guided by the legislation of the terrorist organization of the DNR, including the so-called Law of the DNR «On the Bar and Practice of Law», while performing their professional duties.

Therefore, 317 attorneys of Ukraine, who decided to join the Unified Register of the DNR Attorneys, publicly announced their support to the activity of the terrorist organization DNR, and their readiness to conduct their activity in the occupied territory of Ukraine, recognize the legislation of the self-proclaimed quasi-state formation, which is explicitly incompatible with the distinguished professional title of the attorney of Ukraine.

In view with the aforesaid, attorney Illia Kostin has filed a number of complaints with the HQDBC and QDCB of both Donetsk Oblast and Kyiv Oblast to bring disciplinary action against persons who, in violation of the Ukrainian legislation on the bar and practice of law, had become attorneys of the DNR; most such complaints were dismissed without prejudice. The complaint of September 27, 2016 to the Kyiv Oblast QDCB, which contained information about the disciplinary offense committed by attorney Yuriy Taldykin, who offered his services

regarding representation in so-called law enforcement agencies, government institutions or courts in Donetsk and the DNR at his website, was dismissed due to the absence of elements of disciplinary offense in his actions (Decision of the Kyiv Oblast QDCB of July 26, 2017).

Moreover, MP Andrii Levus has also filed his complaint (deputy's appeal No. D-023/203 to the head of the Donetsk Oblast QDCB of July 11, 2016) [118] with regard to bringing disciplinary action against attorneys included in the Unified Register of DNR Attorneys; however, no disciplinary proceeding was initiated according to his appeal due to the lack of evidentiary support (Letter No. 140, dated July 27, 2016).

However, despite a sufficient number of facts indicating that attorneys have violated the existing Ukrainian legislation on the bar and practice of law, the oaths of attorney of Ukraine, the PCRБ, HQDBC, Donetsk Oblast QDCB, and Kyiv Oblast QDCB never found the grounds for initiating disciplinary proceedings and bringing such persons to disciplinary liability.

On July 11, 2016, immediately after submitting a complaint against Iryna Markova and Mykola Karakash, members of the Donetsk Oblast BC, the Donetsk Oblast QDCB sent a letter stating that the powers of those persons as members of the Donetsk Oblast BC had been terminated for committing disciplinary offenses, due to which the complaint was not considered by the HQDBC.

MP Andrii Levus, head of the Subcommittee on State Security of the Verkhovna Rada of Ukraine Committee on National Security and Defense has filed a number of statements with regard to the crime committed by attorneys included in the Unified Register of the DNR Attorneys. Said statements were included by the SBU in Criminal Proceeding No. 2201500000000245 on the grounds of crimes stipulated in Part 1 of Article 109, Part 2 of Article 110, Part 1 of Article 258-3 of the Criminal Code of Ukraine, regarding the setting up of the terrorist organization of the Donetsk People's Republic.

Dismissing complaints without a hearing and refusal to initiate disciplinary proceedings against attorneys who voluntarily, at their own discretion, joined the Unified Register of the DNR Attorneys and practice law in the territory of the DNR, recognizing the operation of so-called bodies, organizations, as well as the so-called regulations of the DNR, points to the lack of action on the part of the HQDBC and the Donetsk Oblast QDCB, and the Kyiv Oblast QDCB on matters with regard to bringing attorneys to disciplinary liability for violation of the oath of attorney of Ukraine.

Based on BCU Decision No. 65 of June 1, 2018 «On the Results of Consideration of Appeals Lodged by Attorneys Koloshyn V. P., Volynska V. I., Kostin I. P. Regarding Clarification in Connection with Representation by the Attorney of Ukraine of Clients Whose Rights Are Violated in Temporarily Occupied Territories and Other Related Matters»[28], the BCU refused to make any judgments about the actions of attorneys who voluntarily, at their own discretion, joined the Unified Register of the DNR Attorneys and practice law in the territory of the DNR, recognizing the operation of so-called bodies, organizations, as well as the so-called regulations of the DNR, referring to the lack of respective powers. Notably, said BCU decision is not made public at the UNBA website.

Data on the activities of attorneys in the occupied territory of Luhansk Oblast is absent, which requires further examination and analysis.

Therefore:

- the operation of the SGBA in the Autonomous Republic of Crimea and the city of Sevastopol has in fact been terminated;
- the BCU does not take any action to protect the professional rights and improve the professional development of attorneys in the Autonomous Republic of Crimea and the city of Sevastopol:
- it does not approve any decisions aimed at the resumption of attorney's self-governance in the Autonomous Republic of Crimea and the city of Sevastopol in the territory controlled by Ukraine;
- it keeps itself aloof from evaluating actions of attorneys who voluntarily joined the Unified Register of the DNR Attorneys and practice law in the territory of the DNR from the standpoint of law, recognizing the operation of so-called bodies, organizations, as well as the so-called regulations of the DNR, by which it explicitly violates the oath of attorney of Ukraine;
- neither the HQDBC, nor the QDCB admit there are grounds for initiating disciplinary proceedings against attorneys who voluntarily joined the Unified Register of the DNR Attorneys and practice law in the territory of the DNR, recognizing the operation of so-called bodies, organizations, as well as the so-called regulations of the DNR, by which they explicitly violate the oath of attorney of Ukraine.

5. NEWLY RESTATED DRAFT LAW OF UKRAINE «ON THE BAR AND PRACTICE OF LAW»

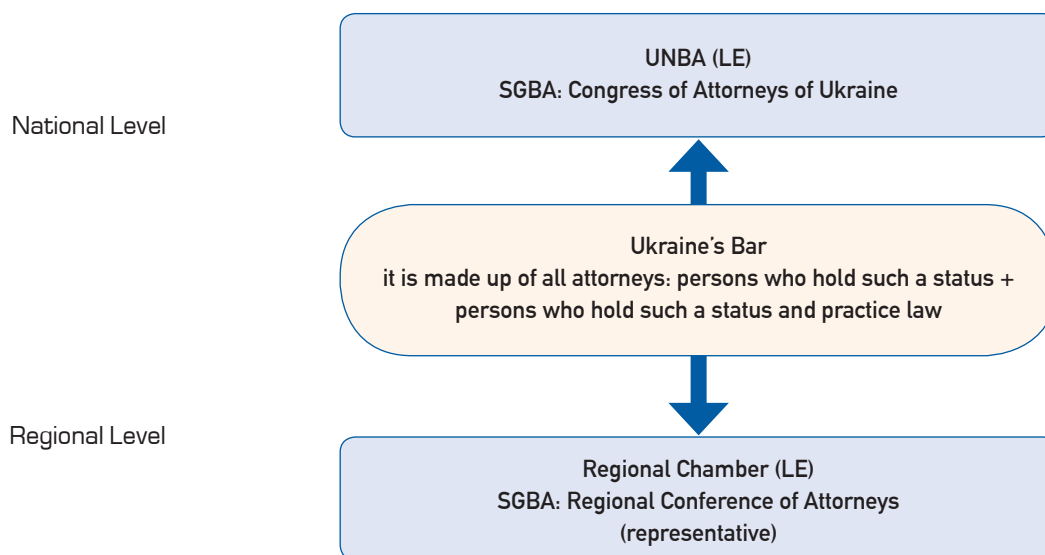
5.1. GENERAL OVERVIEW

The JRC Working Group for Reforming the Bar, the Public Prosecutor's Office, and the FSLA System began restating the Law of Ukraine «On the Bar and Practice of Law» in June 2015, upon endorsement of the 2015–2020 Strategy for Reforming the Court Structure and Procedure and Those of Related Institutions of Law, and completed this work in February 2018. The group comprised the heads of the UNBA, BCU, Kyiv City BC, and Kyiv Oblast BC as well as attorneys and scholars. All RBC and QDCB heads were

involved in discussing the draft law on several occasions at various stages of the process. Feedback and conclusions regarding the text of the draft law and its compliance with the generally accepted international standards of organization and operation of the bar have been repeatedly provided by EU [91–92] and CoE experts. The Draft Law of Ukraine «On the Bar and Practice of Law» adopted as a whole by the Judicial Reform Council through a majority vote survey in June 2018 [66] will be analyzed herein-below. More details about working on the draft law: [114; 115].

Figure 8.

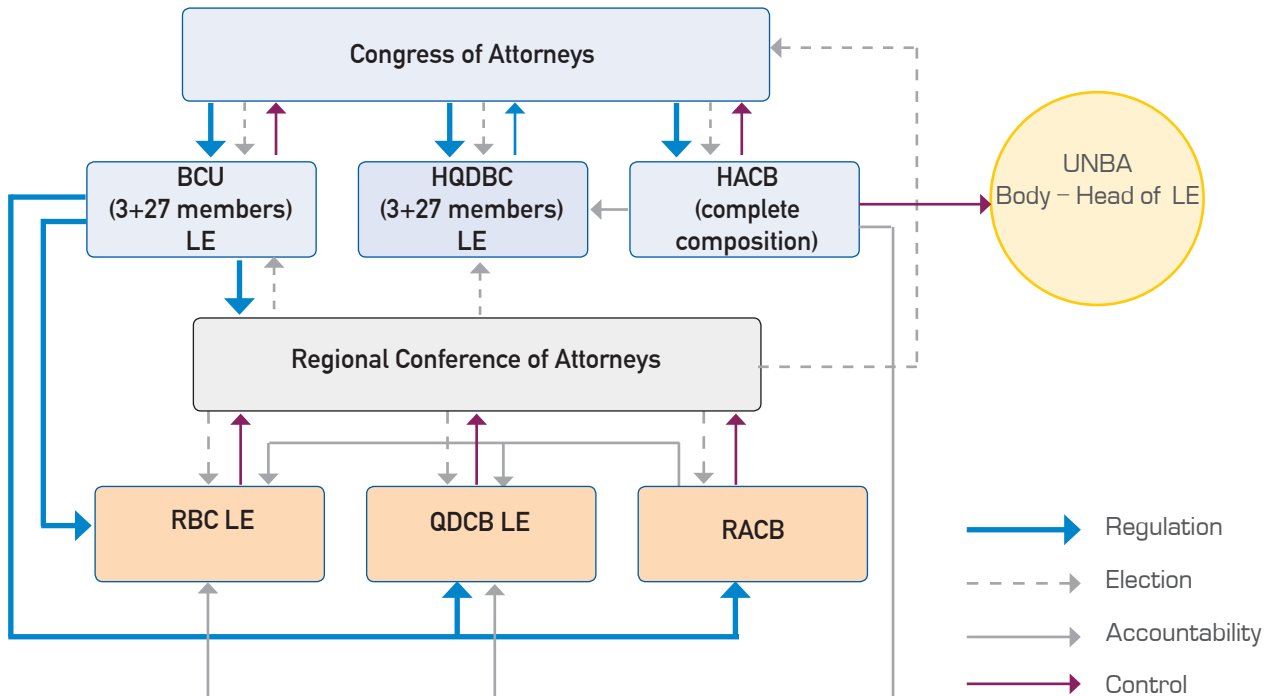
Self-Governing Bodies of Attorneys Provided for by the Draft Law



Source: authors' analysis

Figure 9.

Self-Governing Bodies of Attorneys Provided for by the Existing Law «On the Bar and Practice of Law»



Source: authors' analysis

Figure 10.

Structure of the Law of Ukraine «On the Bar and Practice of Law» and the Draft Law of Ukraine «On the Bar and Practice of Law»

Law Of Ukraine «On The Bar And Practice Of Law» dated July 5, 2012	Newly restated Draft Law of Ukraine «On the Bar and Practice of Law» approved by the JRC in June 2018
61 articles, 10 sections	75 articles, 11 sections
I. General Provisions	I. General Provisions
II. Acquiring the Right to Practice Law. The Legal Forms of Practicing Law	II. Acquiring the Right to Practice Law. The Legal Forms of Practicing Law
III. Types of Practicing Law. The Rights and Duties of the Attorney. The Guarantees of Practicing Law.	III. Practicing Law and Its Guarantees. The Rights and Duties of the Attorney

IV. Practicing Law and Other Types of Activity	
IV. Legal Services Agreement	
V. Suspending and Terminating the Right to Practice Law	VI. Suspending and Terminating the Right to Practice Law
VI. Disciplinary Liability of the Attorney	VII. Disciplinary Liability of the Attorney
VII. Self-Governance of Attorneys	VIII. Self-Governance of Attorneys
IX. Funding the Self-Governance of Attorneys	
VIII. Practicing Law in Ukraine by the Attorney of a Foreign State. The Peculiarities of the Attorney of a Foreign State Status	X. Practicing Law in Ukraine by the Foreign Attorney. The Peculiarities of the Foreign Attorney Status
IX. Final Provisions	
X. Transitional provisions.	XI. Final Provisions and Transitional Provisions

Source: authors' analysis

General Provisions:

- the list of key terms defined in the law is expanded to include the following terms: «budget of the Ukrainian National Bar Association or the budget of Ukrainian attorneys' self-governance», «budget of the regional bar council», «Unified Register of Attorneys of Ukraine», «attorney of a foreign state», «professional lawyer's aid», «preferential voting», «fiduciary activity»;
- the terms «other types of legal services» and «conflict of interest» are removed;
- the terms «attorney», «practice of law», «client», «defense», and «representation» are defined in a more precise manner;
- the term «legal services agreement» is replaced with the term «lawyer's services agreement»;
- promoting the practical implementation of the rule of law principle and ensuring the right of everyone to receive professional legal services is established to be the objective of the bar;
- the legal basis for the activity of the bar is expanded to include international agreements, the consent to be bound by which has been given by the VR of Ukraine, and the PCRB and other regulations of the SGBA;
- the principles of practicing law are substantially expanded to include the following: integrity and professional dignity; loyalty to the client's interests; respect towards colleagues by profession; respect for the court and rules of justice; adherence to the appropriate standards of quality of professional legal services;
- the principle of confidentiality is replaced with the principle of professional secrecy; the principle of the rule of law is removed;
- the possibility to combine private practice of law with the practice of law in the form of the AO and the AC is provided for;
- it is stipulated that the state should guarantee the independence of the bar and the guarantees of practicing law should be observed;

- preventing any interference with the practice of law and not interfering with the operation of the bar and self-governing bodies of attorneys are provided for;

Access to the Profession. The Forms of Practicing Law:

- the requirements for acquiring the status of an attorney are set out in a more precise manner:
 - the requirement making it mandatory to take a six-month internship is canceled;
 - the possibility of gaining job experience in the field of law is narrowed down – only as an attorney intern and/or as a judge, public prosecutor;
 - the time period for restoring the attorney status for persons deprived of it is increased from two to three years;
- the requirements regarding incompatibility are brought into compliance with Clause 1 of Part 1 of Article 3 of the Law of Ukraine «On Prevention of Corruption»;
- the time period for filing an application for suspension from the practice of law in connection with the occurrence of circumstances of incompatibility is increased from three to 10 days;
- taking the qualification exam by way of anonymous evaluation in writing is introduced;
- an exhaustive list of documents to be attached to the application for admission to the qualification exam is determined;
- the documentation of the qualification exam process using technical means and the qualification exam statement is provided for;
- the text of the oath of attorney of Ukraine is changed;
- the title of the document certifying the attorney status is changed from the Certificate of the Right to Practice Law to the Certificate of Attorney of Ukraine;
- the possibility of entering data of several legal forms of practicing law in the URAU at one and the same time is provided for;

- the possibility of practicing law in the form of the AO or the AC, the founder of the AO or a member of the AC, or being in labor relations with them is provided for;
- the possibility of an attorney who is engaged in practicing law individually through the AO or the AC to engage other attorneys, the AO or the AC on a contractual basis in the implementation of legal services agreements with the client's consent, while still being liable to the client for the proper provision of legal services, is provided for;
- the requirements for the educational level of the assistant attorney (not lower than a bachelor's degree) are changed;
- the possibility of establishing the general rules of professional conduct of the assistant attorney through the Assistant Attorney Terms of Reference, which should be approved by the Congress of Attorneys of Ukraine, is provided for;
- the position of an intern – assistant attorney who holds a higher legal education degree not lower than that of a master and conducts his or her activity under the supervision of an attorney to acquire the status of an attorney and to independently perform the activity associated with the practice of law is introduced;
- the possibility of an attorney to be gowned and have the lapel badge, which samples are approved by the BCU, while performing his or her professional activity during the consideration of matters in court is provided for.

Guarantees of Practicing Law. The Rights and Duties of the Attorney

- the types of practicing law are supplemented to include the provision of legal information, advice, explanations on mediation issues, participation in the organization and conduct of the mediation procedure and fiduciary activity;
- the professional rights of the attorney are supplemented to include the following:
 - the right to gather information about facts that can be produced in evidence by any means not prohibited by law;

- the right to have access of identified users to state registries according to the procedure established by the relevant registry holder or an automated system as agreed by the BCU, except registers containing information that is considered to be a state secret;
- the right to apply technical means not prohibited by law, without permission from officers or the court;
- the right of free access to the premises of courts, public prosecutor's offices, police, internal affairs authorities, other law enforcement agencies, institutions of pre-trial detention and execution of punishments, government authorities, at any time, if the client is in such premises;
- the right to participate in any investigative (search) or procedural actions in which the client has the right to take part;
- the right to use other professional rights provided for by this and other laws, the ECHR and its protocols, other international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine, as well as the practice of the ECtHR;
- the professional duties of the attorney are supplemented to include the following:
 - facilitating the implementation of independent and impartial justice in accordance with the rule of law, showing respect for court;
 - avoiding risks of conflict of interest to prevent any actions that compromise the client or his or her interests;
 - having a place of work;
 - preserving and protecting information that constitutes the attorney-client privilege;
 - using his or her professional rights in good faith;
 - paying annual contributions for funding the operation of the SGBA as and when established by the Congress of Attorneys of Ukraine in accordance with the budget approved by the Congress of Attorneys of Ukraine;
- the law is supplemented to include a detailed article on avoiding a conflict of interest;
- the concept of attorney-client privilege is expanded, and the procedure for its security and disclosure is improved;
- the guarantees of practicing law are substantially expanded, in particular, with regard to:
 - the protection of information and documents that constitute the attorney-client privilege, that were obtained by the attorney in relation to practicing law, or are used by the attorney to practice law;
 - the application of measures to ensure criminal proceedings against the attorney;
 - the prohibition of home invasion or penetration into other premises of the attorney, or the premises where the attorney's place of work is located, conduct of examination, search or other investigatory (search) actions, as well as the conduct of a personal search of the attorney, examination, discovery or seizure of belongings and documents of the attorney;
 - the prohibition of the gathering of information on communications, correspondence, and other communications of the attorney;
 - the features of conducting certain investigatory (search) actions and measures to ensure criminal proceedings against the attorney, etc.
- the improvement of the attorney's request institution, in particular:
 - the amount of information not subject to disclosure in response to the attorney's request (only confidential and official information, if its disclosure violates the rights of third parties to the protection of

personal data or protection of intellectual property; information relating to the private life of an individual) is significantly narrowed down;

- liability is established for abusing the right to the attorney's request.

Practicing Law and Other Types of Activity:

- the possibility of conducting any type of activity by the attorney not prohibited by law, in particular, the one which is not incompatible with the practice of law, is provided for;
- the peculiarities of the status of an attorney in labor relations are provided for;
- the possibility of combining the practice of law with the status of an official of a business or other legal entity is provided for;
- the peculiarities of the status of an attorney in the public service and in the service in local self-government authorities are defined.

Suspending and Terminating the Right to Practice Law:

- imposing a disciplinary penalty upon the attorney in the form of suspension of the right to practice law is provided for in the event of:
 - failure to pay the annual fee of attorneys to finance the activity of the SGBA after applying another disciplinary penalty for such a non-payment;
 - a substantial breach of the PCRB and/or the provisions of this law, including that which is a basis for imposing a disciplinary penalty in the form of termination of the right to practice law, if, under the specific circumstances, the termination of the right to practice law is an excessive disciplinary penalty;
- violating the PCRB on a regular basis or committing such violation in a gross manner on one occasion only is removed as one of the grounds for imposing a disciplinary penalty on the attorney in the form of suspen-

sion of the right to practice law;

- the list of grounds for termination of the right to practice law is expanded, in particular, to include the following:
 - systematic breaches of the PCRB and/or provisions of the law, which undermines the authority of the bar and the profession of attorney;
 - bringing to disciplinary liability, on more than one occasion within a year, for abusing the right of access to state registers and the right to the attorney's request;
 - providing representation or taking other actions on behalf of another person without authority or in violation of the powers of authority other than actions taken to protect the client's interests, which did not harm him or her, and actions subsequently approved by a person on behalf of or in whose interests they were taken;
 - providing knowingly false information by the attorney with regard to the scope of his or her powers, including a failure to enter information regarding the limitation of his or her powers in the warrant;
 - practicing law by the attorney during the period of suspension of the right to practice law.

Disciplinary Liability of Attorneys:

- it is established that the attorney may be subject to disciplinary liability solely on the grounds stipulated by this law;
- it is determined that disciplinary proceedings against the attorney, including a member of the SGBA, are conducted by the regional disciplinary commission of the bar at the address of the attorney's main place of work specified in the URAU, except members of the disciplinary commissions, the proceedings against whom are conducted by the disciplinary commission of the bar of another region located closest to the regional disciplinary commission of the bar in terms of the territory;

- the list of elements of misconduct is expanded; such a misconduct as violation of the oath of attorney of Ukraine is taken off the list;
- it is provided that the attorney may not be brought to disciplinary liability for expressing his or her own opinion or the legal stance on a case, disagreement with the court decision, decision or position of the body or official of the SGBA, any government authority or local self-government authority, or criticism of such a decision or the legal stance, own assessment of the relevant circumstances;
- it is provided that the attorney elected to the SGBA may not be brought to disciplinary liability for acts or omissions committed by him or her as an official (member) of such a body;
- the range of persons who may file a disciplinary complaint against actions of the attorney is identified;
- the requirements to the form and content of the disciplinary complaint, the grounds for leaving the complaint without consideration and its return to the complainant are established;
- the list of disciplinary penalties is expanded to include as follows:
 - a warning;
 - a reprimand;
 - money penalties in the amount of up to three subsistence minimums for able-bodied persons;
 - suspending the right to representation and defense of clients in court for a period of one to six months;
 - for attorneys of Ukraine – suspending the right to practice law for a period of one month to one year, and for attorneys of foreign states – excluding from the URAU for a period of one month to one year;
 - for attorneys of Ukraine – suspending the right to practice law with further inclusion of such information into the URAU, and for attorneys of foreign states – excluding from the URAU with further re-
- storing the right to re-enter the URAU for a period of two years;
- a list of stages of disciplinary proceedings is defined in a more precise manner to include the following:
 - preliminarily examining and verifying the disciplinary complaint or a separate court decision;
 - initiating disciplinary proceedings;
 - considering a disciplinary case;
 - adopting the decision to bring or not to bring an attorney to disciplinary liability;
 - appealing and reviewing the disciplinary case decision;
- the procedure for disciplinary proceedings is defined more precisely;
- the grounds for challenging a member of the disciplinary commission are provided for;
- the circumstances that are taken into account when determining the type of disciplinary penalties are defined;
- the procedure for appealing the disciplinary case decisions is specified;
- the clause that appealing the disciplinary case decision terminates its legal force is provided for.

Self-Governance of Attorneys:

1. General Provisions

- it is provided that only attorneys who practice law may participate in the activity of the SGBA and be elected as SGBA members;
- the list of objectives pursued by attorneys' self-governance is expanded and specified;
- it is provided that the self-governance of attorneys is exercised through the UNBA and the RCAs (of the Au-

- tonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol], which are legal entities;
 - the powers of the UNBA and the RCA are determined;
 - the SGBA system is defined at the national and regional level, and the decentralization of their powers is provided for;
 - the national SGBA system includes the following:
 - the Congress of Attorneys of Ukraine
 - the BCU;
 - the Higher Qualification Commission of the Bar;
 - the Higher Qualification and Disciplinary Bar Commission;
 - the High Audit Commission of the Bar;
 - the regional SGBA system includes the following:
 - the Regional Conference of Attorneys (of the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol);
 - the RBCs (of the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol);
 - the Regional Qualification Commission of Attorneys (of the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol);
 - the Regional Disciplinary Commission of Attorneys (of the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol);
 - the Regional Audit Commission of Attorneys (of the Autonomous Republic of Crimea, oblasts, the city of Kyiv, and the city of Sevastopol);
 - it is provided that the national and regional SGBAs should not have the status of a legal entity and operate as part of the UNBA and the RCA independently and they should not be subordinate to each other;
 - it is provided that the decisions of the national and regional SGBAs shall be binding for attorneys and that the decision of the SGBA shall come into force as of the date of approval unless otherwise stipulated by such a decision;
 - it is stipulated that the SGBAs are elected for a three-year period;
- 2. Regional SGBA:**
- a detailed procedure for convening and holding the regional conference of attorneys and the powers thereof are provided for;
 - the procedure for forming the RBC and the powers of the RBC and its head are provided for, so are the procedure for forming the regional qualification, disciplinary and audit commissions and the powers thereof;
 - it is provided that the regional conference of attorneys should be the higher SGBA in the relevant region and it may be attended by all attorneys the principal place of work of whom is in the relevant region;
 - the procedure for forming the BCU, HQCB, HQDC and the HACB and the powers thereof are defined;
- 3. National SGBA:**
- it is provided that the Congress of Attorneys of Ukraine should be the higher SGBA in Ukraine and should be convened by the BCU on an annual basis;
 - the procedure for convening and holding the Congress of Attorneys of Ukraine and the powers thereof are regulated in a more precise manner;
 - the powers of the Congress of Attorneys of Ukraine include:
 - adopting its rules of procedure;
 - electing the head and deputy head of the BCU, HQCB, and HQDC as well as the head and members of the HACB;
 - adopting and amending the UNBA charter;

- adopting the PCRB;
 - adopting and amending the rules of procedure of the BCU, HQCB, and HACB;
 - considering and adopting BCU, HQCB, and HACB reports as well as HQDC audit reports;
 - electing two HCJ members and appointing one QD–CPP member;
 - adopting the self–governance budget of Ukraine’s attorneys based on the draft budget to be developed by the BCU;
 - establishing the amount of attorneys’ annual fees to finance the operation of attorneys’ self–governing bodies;
 - establishing the amount of fee for the qualification exam within the limits specified by law;
 - adopting the procedure for keeping the URAU;
 - revising and canceling the decisions of the BCU;
 - exercising other powers in accordance with the law;
 - it is provided that the Congress of Attorneys of Ukraine may work no more than 30 calendar days of the date of its opening and a break or breaks may be announced within this time period.
 - other sources not prohibited law;
 - it is provided that establishing fees or other payments by the SGBA not stipulated by this law should be prohibited;
 - limits on the amount of fees for taking the qualification exam (no more than three subsistence minimums for able–bodied persons) are established;
 - the procedure for distributing the funds received from the payment of attorneys’ annual fee to finance the operation of the SGBA and the fee for taking the qualification exam among the SGBA is established;
 - the development of the draft self–governance budget of Ukraine’s attorneys by the BCU and its approval by the Congress of Attorneys of Ukraine on an annual basis is provided for;
 - the development of the draft budget of the RCA and its approval by the regional conference of attorneys on an annual basis is provided for;
 - the content and the procedure for publishing the financial statements of the national and regional SGBA, as well as the audit reports of the HACB and RACB are determined.
- Practicing law in Ukraine by the attorney of a foreign state. The peculiarities of the foreign attorney status:**

Budgeting and Finance:

- the sources of funding the SGBA are determined. These particularly include the following:
 - the fee paid for taking the qualification exam;
 - the annual fees payable by attorneys for the SGBA activities to be financed;
 - the voluntary contributions made by the attorneys, AOs, and ACs;
 - the voluntary contributions made by individuals and legal entities;

- it is provided that an attorney of a foreign state may provide lawyer’s aid in the territory of Ukraine exclusively on matters of law of the relevant foreign state and/or international public law.

Final Provisions and Transitional Provisions:

- the following is provided for from the date of entry into force of this law:
 - the continuation of the status of an attorney and the right to practice law for persons who have acquired the status of an attorney and the right to be engaged in (the exercise of) the practice of law;

- keeping in force the certificates of the right to practice law issued without the need to replace the same with the certificate of an attorney of Ukraine;
- the continuation of the powers of members of the HCJ, HQCJU, and the QDCPP elected (appointed) by the Congress of Attorneys of Ukraine before the expiration of such powers;
- the continuation of the powers of the head and members of the BCU, HQDBC, and the HACB until the date of election of the head and members of the national self-governing bodies of attorneys by the Congress of Attorneys of Ukraine;
- the continuation of the powers of the head and members of the RBC, QDCB, and the RACB until the date of election of the heads and members of the relevant regional SGBA by the regional conferences of attorneys;
- the peculiarities of the implementation of functions by the qualification and disciplinary chambers of the QDCB until the conference of attorneys of the relevant region establishes the regional qualification and disciplinary commissions of the bar;
- the peculiarities of the implementation of functions by the HQDBC until the decision on the establishment of the HQCB and the HDBC is approved by the Congress of Attorneys of Ukraine;
- the continuation of the validity of decisions and of other documents of the SGBA that are in agreement with this law until the SGBA approves new decisions and documents in accordance with this law;
- it is established that during the period of four years of the date of entry into force of this law, persons who intend to become an attorney, have higher legal education with a master's degree (or equivalent), and a good command of the official language of the state, may obtain the status of an attorney in accordance with the procedure established by this law by taking the qualification exam in writing on an anonymous basis without taking an internship if they have job experience as an assistant attorney (intern), and if, on the date of application for admission to the qualification exam they have their job experience of at least three years in the field of law after gaining higher legal education as self-employed persons or worked on the positions of:
 - a lawyer, legal officer, chief legal officer, director of legal affairs department, other similar position (positions) of government authorities, local self-government authorities, enterprises, institutions, and organizations, irrespective of the form of ownership, the service in which includes the provision of lawyer's (legal) aid;
 - an investigator, notary officer;
 - a judge assistant, assistant notary;
 - an educator or academic who provides training, education and professional training in higher educational institutions or higher education establishments of post-graduate study;
 - a scientist who conducts scientific activity in a scientific or research and development institution;
- within one year of the date of entry into force of this law, persons who have one year of job experience during the last two years as assistant attorneys and (or) two years of job experience in the field of law may acquire the status of an attorney in accordance with the procedure stipulated by Law No. 5076;
- an internship started prior to the date of entry into force of this law taken by persons who obtained a certificate of completion of the qualification exam will be continued by them in accordance with the procedure stipulated by Law No. 5076 until the date of completion of the internship;
- persons who obtained a certificate of completion of the qualification exam, do not have one year of job experience as an assistant attorney and do not start their internship, will take their internship according to the procedure stipulated by Law No. 5076 until the date of completion of the internship;
- taking the qualification exam is in accordance with the procedure stipulated by Law No. 5076 until the BCU

- approves the provisional regulation on the qualification exam;
- not later than four months of the date of entry into force of this law, the RBC convenes and conducts regional conferences of attorneys, which:
 - elect delegates to the Congress of Attorneys of Ukraine;
 - approve decisions on the establishment of the RCB and approve their charters;
 - approve the decisions on the termination of operation of the RBC as a legal entity;
 - determine the number of the RBC members, elect the head and members of the RBC, approve the RBC Terms of Reference;
 - approve the decision on the termination of operation of the QDCB as a legal entity;
 - approve the decision on the establishment of the RQCB, RDCB, and the RACB, approve their terms of reference and composition, and elect the heads and members;
 - approve the RCB's budgets;
 - elect regional attorneys' representatives to the BCU, HQCB, and the HQDC;
- of the date of approval of the decision to adopt the charter of the RCB by the regional conference of attorneys, state registration of the RCB is performed;
- the operation of the RBC and the QDCB as legal entities is terminated as a result of the reorganization by joining the RCB;
- the BCU, not later than six months of the date of entry into force of this law, convenes and holds the Congress of Attorneys of Ukraine which:
 - approves the decision to terminate the operation of the HQDBC as a legal entity;
- approves the decision on the establishment of the HQCB, HQDC, and the HACB, approves their regulations, elects the heads and deputy heads of the HQCB, HQDC, and the BCU, the head and members of the HACB;
- establishes the amount of payment for taking the qualification exam;
- establishes the amount of attorneys' annual fees to finance the operation of attorneys' self-governing bodies;
- approves the self-governance budget of Ukraine's attorneys;
- the operation of the HQDBC as a legal entity is terminated as a result of the reorganization by joining the UNBA.
- the BCU:
 - develops and approves the provisional regulation on the qualification exam in accordance with this law;
 - develops the draft self-governance budget of Ukraine's attorneys;
 - in cooperation with the RBC, conducts organizational and technical activities with regard to entering information in the URAU on persons who, on the date of entry into force of this law, have a certificate of the right to practice law and information on whom is not included into the URAU.
- the RBC:
 - develops the draft budget of the RCB;
 - ensures the submission of necessary documents for state registration of the RCB;
 - enters information in the UARU on persons who, on the date of entry into force of this law, have a certificate of the right to practice law and information on whom is not included into the URAU;
- holders (administrators) of state registers and auto-

mated systems:

- ensure that the regulations on state registers and other regulations are amended to enable attorneys to enjoy their right to authenticated access to relevant state registries and automated systems;
- in cooperation with the BCU, provide attorneys with authenticated access to state registries and automated systems.

5.2. STRENGTHS OF THE DRAFT LAW

- Defining objectives of the activity of the bar of Ukraine (Part 1 of Article 3);
- expanding the principles of practicing law to bring them into line with the generally accepted international standards (Part 1 of Article 4);
- improving the procedure for access to the profession of attorney through strengthening the requirements and restrictions for persons who intend to obtain the status of an attorney, improving the procedure for taking the qualification exam by introducing the qualification exam in writing on an anonymous basis, documenting its process using technical means and keeping records (Articles 6, 8, 9);
- bringing the requirements regarding incompatibility into compliance with the Law of Ukraine «On Prevention of Corruption» (Part 1 of Article 7);
- introducing the possibility of conducting the professional activity during the legal proceedings in courts and wearing long robes and having the lapel badge the samples of which are approved by the BCU (Part 2 of Article 18);
- expanding the list of types of practice of law (Clause 9 and 10 of Part 1 of Article 19);
- expanding the professional rights of attorneys through granting the attorney the right to: gather evidence by any means not prohibited by law and authenticated access to state registers, etc. (Part 1 of Article 20);
- improving the attorney request institution, in particular, substantially reducing the amount of information that may not be provided in response to the attorney request (Article 25);
- specifying the settling of issues regarding a conflict of interest (Article 22);
- expanding the concept of attorney–client privilege, improving the procedure for its security and disclosure (Article 23);
- enhancing the guarantees of practice of law significantly, in particular, in criminal proceedings (Article 24);
- improving disciplinary liability (Section VII), in particular:
 - the establishment of the guarantees of not being subjected to disciplinary liability for expressing own opinion or the legal stance on a case, disagreement with the decision or position of an authority or officer of the SGBA or criticizing such a decision or position, or own assessment of the relevant circumstances (Part 4 of Article 39);
 - the impossibility of bringing an attorney elected to the SGBA to disciplinary liability for actions or omissions committed (permitted) by him or her as an official (member) of such a body (Part 5 of Article 39);
 - the determination of the range of persons who may file a disciplinary complaint against the attorney's actions (Part 2 of Article 41);
 - the establishment of the requirement for the form and content of a disciplinary complaint (Part 4 of Article 41);
 - the expansion of the list of disciplinary penalties to ensure the implementation of the principle of proportionality (Part 1 of Article 40);
 - the determination of circumstances that are taken into account when determining the type of disciplinary penalty (Part 3 of Article 47);

- the clarification of the procedure for appealing decisions in a disciplinary case, in particular, the suspension of the application of disciplinary penalty in the event of appealing the decision to bring an attorney to disciplinary liability (Part 2 of Article 48);
- improving the principles and organization of the self-governance of attorneys, in particular, by improving the procedure for convening and holding the Congress of Attorneys of Ukraine and the regional conference of attorneys as well as the powers thereof, and the procedure for forming other national and regional SGBA as well as the powers thereof (Section VIII);
- clearly defining the sources of funding the operation of the SGBA, and prohibiting the establishment of fees or other payments by the SGBA other than those stipulated by law (Article 67);
- introducing a transparent budgetary process of the national and regional SGBA (Part 3–8 of Article 71);
- determining the content of information and the procedure for publishing the financial statements of the national and regional SGBA (Article 72);
- restricting the provision of legal services by attorneys of a foreign state in the territory of Ukraine exclusively by matters of law of the relevant foreign state and/or international public law (Part 2 of Article 73);
- articulating clear and logical transitional provisions of the draft law (Clause 1–16 of Section XI);
- amending the CCrP to strengthen the right to defense, extend the procedural rights of the defense counsel, determine the procedural rights of an attorney who provides legal services to the witness, improve the procedure for confirming the powers of the defense counsel, and enhance the guarantees of practice of law in criminal proceedings (Clause 18 of Section XI).

5.3. WEAKNESSES OF THE DRAFT LAW

The gaps of the draft law may include:

- the replacement of the principle of «confidentiality»

of practice of law with the principle of observance of the professional secrecy, which has much narrower content (Clause 8 of Part 1 of Article 4);

- the provision according to which the decision of the SGBA will enter into force on the date of adoption unless otherwise is provided for by such a decision (Article 6, Article 67), which is not in compliance with Article 57 of the Constitution of Ukraine;
- the termination of the right to practice law on the basis of systematic violations of the PCRБ and/or the provisions of this law, which undermines the authority of the bar and the profession of an attorney (Clause 3 of Part 2 of Article 37) without defining the relevant concepts in the law;
- the amendment of Article 481 of the CCrP of Ukraine by supplementing it with Part 2, according to which the persons referred to in Part 1 of this article, are given a notice of suspicion by the Public Prosecutor General (acting Public Prosecutor General), his or her deputy, the head of the regional public prosecutor's office within his or her authority or on a proxy by the investigator, the public prosecutor according to the procedure specified in Part 1 and 2 of Article 278 of the code, which lowers the status of an attorney comparing to that of the existing law;
- the absence of the provision on bringing the procedure for keeping the URAU into compliance with the requirements of the Regulation on Database Sets That Are Subject to Publication in the Form of Open Data, approved by Resolution No. 835 of the Cabinet of Ministers of Ukraine, dated October 21, 2015, (Article 17).

5.4. DISPUTABLE ISSUES OF THE DRAFT LAW

The disputable issues of the draft law may include:

- the possibility of combining practice of law individually with the activity in the form of the AO or the AC (Part 3 of Article 4) and, accordingly, entering several legal forms of practice of law in the URAU at one and the same time (Clause 3 of Part 6 of Article 17);

- the impossibility for an attorney engaged in the practice of law to combine it with work under an employment agreement (contract), except scientific, teaching or creative activity (Part 3 of Article 28), since work under an employment agreement (contract) is not prohibited by law, in particular, it is not defined by law as being incompatible with practice of law (Part 1 of Article 27);
- a combination of the status of an attorney with the status of a public servant, in particular, with regard to:
 - the provision by the attorney, who works in the government authority, other government agency or local self-government body, of lawyer's aid to such a body outside the scope of practice of law (Article 30);
 - simultaneous adherence to the PCRB and the Rules of Ethical Conduct for Public Servants by the attorney (Part 7 of Article 30) if the attorney works in the government authority, other government agency (Article 30);
 - a combination of the oath of the attorney of Ukraine (Part 1 of Article 10) with the oath of the public servant (Part 1 of Article 36 of the Law of Ukraine «On Public Service») if the attorney works in the government, other government agency (Article 30);
 - the possibility of bringing a public servant to disciplinary liability in the same manner as an attorney (Part 8 of Article 30).
- excluding the termination of the right to practice law as a disciplinary penalty for systematic violation of the PCRB and/or the provisions of this law, which undermines the authority of the bar and the profession of an attorney (Clause 3 of Part 2 of Article 37);
- removing Part 2 of Article 481 of the CCrP (Paragraph 36 of Sub-Clause 18.2 of Clause 18 of Section XI «Final and Transitional Provisions»);
- bringing the provisions on the Procedure for Keeping the URAU into compliance with the requirements of the Regulation on Database Sets That Are Subject to Publication in the Form of Open Data approved by Resolution No. 835 of the Cabinet of Ministers of Ukraine, dated October 21, 2015;
- precluding the possibility of combining the practice of law individually with the activity in the form of the AO or the AC (Part 3 of Article 4) by maintaining the current wording of Part 3 of Article 4 (Law No. 5076) and, accordingly, the possibility to enter information on several legal forms of practice of law in the URAU at one and the same time (Clause 3 of Part 6 of Article 17) by keeping the current wording of Clause 3 of Part 2 of Article. 17 (Law No. 5076);
- removing the provision according to which the attorney engaged in the practice of law may not combine it with his or her work under an employment agreement (contract), except scientific, teaching or creative activity (Part 3 of Article 28), since work under an employment agreement (contract) is not prohibited by law, in particular, it is not defined by law as being incompatible with the practice of law (Part 1 of Article 27), and stipulating the possibility of combining the practice of law with work under an employment agreement (contract) (Part 3 of Article 28);
- refining the possibility of combining the status of an attorney with the public service and of providing lawyer's aid by the attorney who works in the government authority, other government agency or local self-government body to such a body outside the scope of practice of law (Article 30), and precluding the possibility of bringing a public servant to disciplinary liability in the same manner as an attorney (Part 8 of Article 30)

5.5. PROPOSALS FOR AMENDING CERTAIN PROVISIONS OF THE DRAFT LAW

To eliminate the weaknesses and address the disputable issues of the draft law, it is proposed:

- replacing the principle of «security of professional secrecy» with «confidentiality and observance of professional secrecy» (Clause 8 of Part 1 of Article 4);
- specifying that the decisions of the SGBA will enter into force on the date following the date of their publication at the official website of the UNBA (Part 6 of Article 67);

CONCLUSIONS

1. It is a generally accepted international standard that the independent bar is a prerequisite for the rule of law and democracy to be strengthened in society.
2. The bar reform is a component of the judicial reform and the human rights strategy, the implementation of which cannot be successful without the institutionally developed independent bar.
3. The public policy relevant to the bar and practice of law is ineffective. The law of Ukraine «On the Bar and Practice of Law» of 2012, which defines the principles of its organization and operation, contains major deficiencies that have a significant negative impact on the discrete social role of the bar in society. This law has not been brought into compliance with the Constitution of Ukraine for two years now after amendments regarding justice were incorporated thereto.
4. The development of the bar of Ukraine in 2012–2018 has revealed a number of gaps in the application of the law as well:
 - the self-governing bodies of attorneys have not been formed in a democratic way, since at the central level and in certain regions, artificial barriers have been created for the participation of attorneys in the process, which calls into question their legitimacy;
 - the decisions of the SGBA approved contrary to the requirements of the legislation lead to conflicts in the community of attorneys, undermine the authority of the bar in society, and do not provide opportunities for achieving the goals specified in the UNBA Charter;
 - the regulatory activity of the self-governing bodies of attorneys, in particular the Bar Council of Ukraine, includes systematic decision making that contravenes the Constitution of Ukraine and the laws of Ukraine, violates human rights, the rights of attorneys and the guarantees of practice of law, and are particularly aimed at limiting the independence of practice of law, obtaining illegal, unjustified and unjust payments from attorneys and other persons, including certain categories of socially vulnerable citizens;
 - artificially complicated access to the profession of an attorney through the establishment of additional, not stipulated by law, requirements and restrictions, in particular, unreasonably high payments (prior to the establishment of a legislative restriction at the initiative of the legislator) for taking an internship and undergoing a compulsory training on a fee-paying basis for applicants to obtain the right to practice law in the UNBA Higher School of Attorneys;
 - the professional rights of attorneys and the guarantees of practice of law are insufficient for an effective performance of the discrete social role in society by the bar;

- the Unified Register of Attorneys of Ukraine that should be merely a technical instrument for registration of attorneys, through illegal interference and other actions, is used by the Bar Council of Ukraine as a powerful tool to exert pressure on attorneys, in particular, to perform the illegal deprivation of their right to practice law outside the disciplinary procedure and manipulations for the purpose of influencing the elections to self-governing bodies of attorneys;
 - the ethics standards of the bar of Ukraine fall short of the international standards for practice of law, the disciplinary system is imperfectly regulated in terms of legislation, the HQDBC and QDCB are financially dependent on the Bar Council of Ukraine and the regional bar councils, the disciplinary practice is non-transparent, there is no analysis that could be used, in particular, to improve ethics standards and planning of advanced training activities for attorneys;
 - the non-transparent system of access of attorneys to advanced training activities, certification and accreditation of the providers of advanced training services for attorneys;
 - the Bar Council of Ukraine has kept aloof from the protection of the professional rights of attorneys of the Autonomous Republic of Crimea and the city of Sevastopol; it has not taken measures to restore the activity of the self-governing bodies of attorneys of the Autonomous Republic of Crimea and the city of Sevastopol in the territory under the control of Ukraine;
 - The Bar Council of Ukraine, the HQDBC and certain QDCB, in fact, are tolerant towards the actions of attorneys who voluntarily, at their own discretion, joined the Unified Register of Attorneys of the DNR and practice law in the territory of the DNR, recognizing the operation of so-called bodies, organizations, as well as the so-called regulations of the DNR, by which they explicitly violate the oath of attorney of Ukraine and undermine the authority of the bar of Ukraine.
5. Despite certain gaps and a few disputable issues, the newly restated Draft Law of Ukraine «On the Bar and Practice of Law» approved by the Judicial Reform Council in June 2018, complies with the generally accepted international standards in broad terms. Should it be adopted, it would improve the principles of organization and operation of the bar to a great extent, address most of the problems the bar of Ukraine has faced in 2012–2018, and make sure that it develops in a progressive manner to the benefit of the public and fair justice.

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