

THE LEGAL PROFESSION IN UKRAINE

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The Legal Profession in Ukraine¹

The structure of the legal profession in Ukraine

Presently, the legal profession in Ukraine is divided into advocates and “lawyers-entrepreneurs”.² This dual structure of the legal profession remains from early 1990s and is characterised by different regulatory frameworks applied to advocates and lawyers-entrepreneurs. The two groups are distinct not only by virtue of specialization or areas of practice, but they are also subject to different regulation of access to the practice of law and professional responsibility.

In terms of specialization, advocates continue to enjoy monopoly over criminal defense. This traditional notion, however, was undermined in 2000 when the Constitutional Court of Ukraine issued a controversial judgment in the *Soldatov* case allowing non-advocates to represent clients in criminal and administrative proceedings. The Court abolished advocates’ criminal defense monopoly by holding that:

“Part 1 of Article 59 of the Constitution of Ukraine providing that “everyone is free to choose the defender of their rights”, ... should be construed as the constitutional right of a suspect, accused, and defendant, as well as a person brought to administrative liability, for the purpose of receiving legal assistance, to appoint as a defender of their rights such person, who is a specialist in the field of law and who is authorized by law to provide legal aid in person or on instructions of a legal entity.

*Part 2 of Article 59 of the Constitution of Ukraine providing that “in Ukraine, the bar acts to ensure the right to defense against charges”, should be construed as one of the constitutional guarantees enabling a suspect, accused, and defendant to pursue their right to freely appoint a lawyer, a person eligible for legal profession, as their defender in criminal proceedings”.*³

Shortly after the ruling was pronounced, amendments were introduced into the Criminal Procedure Code⁴ allowing specialists in the field of law to appear before criminal tribunals upon presentation of an agreement with the client or a written instruction of a company. As a result, for nearly three years advocates lost their monopoly over criminal litigation.

The *Soldatov* decision attracted much criticism from Ukrainian legal community, especially from advocates, but the issue remained unresolved until 2003, when the Plenum of the Supreme Court of Ukraine issued a Resolution, in which it gave a

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² The term lawyers-entrepreneurs refers to self-employed persons (one-man businesses) or corporations who are engaged in profit-making commercial activity in the form of provision of legal services.

³ Decision of the Constitutional Court of Ukraine of November 16, 2000, on the petition of Gennadiy Soldatov concerning the official interpretation of Article 59 of the Constitution, Article 44 of the Criminal Procedure Code and Article 268, 271 of the Code on Administrative Offenses.

⁴ The Law “On amending the Criminal Procedure Code of Ukraine” No. 2533-III of June 21, 2001.

restrictive interpretation of the Constitutional Court's holding. The Plenum stated *inter alia* that in order to be allowed to defend a client in a criminal case, specialists in the field of law had to provide documents which, according to the law, authorized them to participate in criminal cases⁵. The Plenum added that in deciding whether a specialist in the field of law has the right to participate in a criminal case, judges should determine which particular law grants them with such right. It concluded that until such special law is passed by the Parliament, specialists in the field of law should not be admitted to participate in criminal cases⁶. While most courts follow this recommendation, there is anecdotal evidence that in some oblasts of Ukraine specialists in the field of law are still allowed to plead before criminal courts.

The second major difference between advocates and lawyers-entrepreneurs concerns the regulation of entrance to the profession. In order to become an advocate a person must receive a degree in law, accumulate two years of professional experience, show profound knowledge of Ukrainian language, pass a bar examination, take an oath and receive an advocate's license⁷. Neither of these or similar requirements are applicable to lawyers-entrepreneurs.

Private practice of law was prohibited in the Soviet Union. All lawyers specializing in company and commercial law were in-house and "collegiums of advocates" provided legal services primarily in criminal, family and some civil law cases. As Ukraine allowed the private practice of law after the collapse of the Soviet Union, lawyers-entrepreneurs emerged as a group of practitioners. In the absence of any professional association their practice was regulated by the state and they were subject to mandatory licensing by the Ministry of Justice.

However, as advocates extended their practice to corporate law, they lobbied the legislature for the adoption of new law that would require mandatory membership in the bar in order to run a private practice.⁸ In order, however, for such a requirement to be introduced, first the Ministry of Justice's licensing requirement for lawyers-entrepreneurs had to be abandoned. In 2000, the advocates succeeded in abolishing the licensing requirement for lawyers-entrepreneurs, but the law establishing mandatory admission to the bar has never been passed. As a result, unless a person desires to become an advocate, there are no requirements for admission to private practice in Ukraine whatsoever.⁹

⁵ Resolution of the Plenum of the Supreme Court of Ukraine No.8 of October 24, 2008 "Concerning the application of legislation which guarantees the right to defense in criminal cases", paragraph 5.

⁶ Ibid.

⁷ The Law "On Advocates" of December 19, 1992, Article 2 paragraph 1.

⁸ Interview of the legal weekly newspaper "Pravovyi Tyzhden" with Tetiana Varfolmееva, President of the Union of Advocates of Ukraine, available at <http://209.85.129.104/search?q=cache:Oguh3IY7pO8J:www.legalweekly.com.ua/article/%3Fuid%3D305+%D0%A1%D0%9A%D0%9B%D0%90%D0%94%D0%90%D0%9D%D0%9D%D0%AF+%D0%9A%D0%92%D0%90%D0%9B%D0%86%D0%A4%D0%86%D0%9A%D0%90%D0%A6%D0%86%D0%99%D0%9D%D0%98%D0%A5+%D0%86%D0%A1%D0%9F%D0%98%D0%A2%D0%86%D0%92+%D1%84%D0%BE%D1%80%D1%83%D0%BC&hl=ru&ct=clnk&cd=27&gl=by&client=firefox-a>

⁹ Irina Paliashvili, "Effect of globalization on law practice in the CIS countries (using Ukraine as an example)", presentation for the Conference "International Practices, Multinational Law Offices, and Networks", January 2001, Kitzbuhel, Austria

Additionally, lawyers-entrepreneurs do not enjoy the special guarantees of independence applicable to advocates and the information communicated to lawyers-entrepreneurs by their clients is not protected by attorney-client privilege. Finally, while advocates must abide by rules of professional ethics and may have their license revoked for their violation, lawyers-entrepreneurs have no binding ethical standards and may not be disciplined.

The lack of licensing requirement for lawyers-entrepreneurs results in the absence of reliable statistics on the number of practicing lawyers in Ukraine. Any law graduate wishing to set up a solo practice must register with a Tax Administration as a private entrepreneur, or sign an employment contract with a law firm. No data is available from the Tax Administration on a number of private entrepreneurs registered to provide legal services, and it is virtually impossible to count non-licensed law firm employees across Ukraine. Various sources suggest that there is up to 50,000 practicing lawyers-entrepreneurs.¹⁰

As regards advocates, although the High Qualification Commission is mandated to keep a single registry of advocates in Ukraine,¹¹ there is no definite number of advocates in the country. The preface to the Register of the Advocates of Ukraine¹², published for the first time in 2004, enumerates reasons which make it problematic to maintain accurate data on the number of advocates. Among these reasons, the High Qualification Commission lists the absences of the required information in certain oblast-level Qualification and Disciplinary Commissions on the number of issued advocate's licenses; high resistance of advocates to the inclusion in the Register of their contact information; refusal of oblast-level advocates' qualification and disciplinary commissions to provide information on the number advocates, etc.

The recently launched Internet resource Register of the Advocates of Ukraine at <http://advocatura.kiev.ua/> is a project of the Newspaper *Advocatura* and is a paid resource (costs \$10 per one month). Although it is more accessible than the printed copy of the Register the web-site informs that the data available through the Internet is an archive as of June 2007 and is not being updated.

According to the head of the High Qualification Commission, approximately 30,000 advocates practice law in Ukraine.¹³

Overall it is possible to speak of approximately 80,000 practicing lawyers in Ukraine¹⁴, or 173 lawyers per 100,000 inhabitants. It would be interesting to note, however, that

¹⁰ "It is again proposed to increase the Bar threefold", available at <http://www.ukradv.org/ua/hotpoint/71/index.html>

¹¹ Decree of the President of Ukraine No. 1240/99 of September 30, 1999 "On Measures to Improve Work of the Bar in Ukraine".

¹² High Qualification Commission, *Register of the Advocates of Ukraine*, Kyiv 2004, 1168 pages.

¹³ Interview with Volodymyr Vysotskyi, Head of the High Qualification Commission, November 23, 2007 available at http://sevastopol.su/arch_view.php?id=1011 ; Also see *Analysis of the Draft Laws of Ukraine on the Bar*, p. 13, Legal Assessment Series of ABA Rule of Law Initiative/Office of Research and Program Development, September 2007.

Ukraine is the only country on the map of members and observers of the Council of Bars and Law Societies of Europe (CCBE) with no information on the number of lawyers.¹⁵

Regulation and organization of the legal profession in Ukraine

The constitutional basis for the functioning of the legal profession in Ukraine is Article 59 of the Constitution which provides for the right of every person to legal assistance¹⁶. While the profession of lawyers-entrepreneurs remains unregulated, the professional activities of advocates are governed by the Law “On Advocates”, Decree of the President “On advocates’ disciplinary and qualifications commissions and High Qualification Commission” and Rules of Advocates’ Ethics.

No law establishes a unified bar association with powers to regulate the admission or the practice of law in Ukraine. Existing non-governmental organizations of lawyers perform limited functions of professional development of their members and provide a forum for lawyers to discuss common issues. Most active lawyers associations include:

- I. The Union of Lawyers of Ukraine,¹⁷ a non-governmental organization established in 1991 which consists of representatives of different legal professions, e.g. advocates, prosecutors, judges, etc. Information about membership not available.
- II. The Ukrainian Bar Association,¹⁸ a non-governmental organization positioning itself as the organization of new generation of lawyers and its members represent different legal professions. Although taking the name in English as the Bar Association its title from Ukrainian could be translated as Association of Lawyers of Ukraine. Established in 2002 it now lists 1141 members.¹⁹
- III. The Association of Advocates of Ukraine,²⁰ a fairly new organization (was established in 2006) which was created with the UBA assistance in order to spread representation at the regional level and unite only advocates. Information about membership not available.

¹⁴ Interview with Sergey Kononov, President of the Ukrainian Bar Association, published in a weekly newspaper “Yuridicheskaya Praktika” No.16(538) of April 15, 2008; available at <http://www.yurpractika.com/article.php?id=100094383>

¹⁵ CCBE Brochure, February 1, 2006 available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_brochure_enpdf1_1179905194.pdf

¹⁶ The Constitution of Ukraine , Article 59

¹⁷ <http://www.lawyersunion.org.ua/new/plenum.htm>

¹⁸ <http://www.uba.ua>

¹⁹ http://www.uba.ua/newsite/cms/component/option.com_members/Itemid,98/

²⁰ <http://www.uaa.org.ua/>

IV. The Union of Advocates of Ukraine,²¹ the oldest nation-wide Ukrainian organization of advocates. This organization was founded in 1990 and initially was the only advocates' organization which worked in Ukraine. It has regional branches in each oblasts of Ukraine. According to Tetiana Varfolomeeva, Chair of the Union, the organization has nearly 7,000 members, In 2003 the Union of Advocates of Ukraine was granted observer status at the Council of Bars and Law Societies of Europe (CCBE). Information about membership not available from public sources.

To regulate advocates' entrance to the profession and discipline, the law establishes a system of public law entities - advocates' qualifications and disciplinary commissions (AQDC) and the High Qualifications Commission (HQC).²² There are 27 AQDCs in Ukraine, including 24 oblast-level commissions, 1 commission for the Autonomous Republic of Crimea, and 2 commissions for the cities of Kyiv and Sevastopol (municipal AQDCs)²³. The HQC operates under the Cabinet of Ministers of Ukraine and performs appellate functions.

AQDCs are responsible for organizing admission to advocate's profession and handling advocates' disciplinary matters. AQDCs are formed for the term of three years by Cabinet of Ministers of Autonomous Republic of Crimea and oblast-level and municipal Councils respectively. Each AQDC operates through two chambers: a qualifications chamber, responsible for the admission of new members; and a disciplinary chamber, responsible for handling disciplinary matters.²⁴

Qualifications chamber consists of 11 members, including 4 advocates, 4 judges, 1 representative of the Cabinet of Ministers of Autonomous Republic of Crimea or oblast-level or municipal Council, 1 representative of oblast-level or municipal department of justice, and 1 representative of the Union of Advocates.²⁵ Qualifications chambers decide on the eligibility of applicants to sit for the bar examination, administer the examination and issue advocate's license. All decisions of qualifications chambers are adopted by simple majority of the full composition of the chamber and maybe challenged in the HQC or in court.

Disciplinary chamber has 9 members of whom 5 are advocates, 2 judges, 1 representative of oblast-level or municipal department of justice and 1 representative of the Union of Advocates. Disciplinary chamber is responsible for examination of complaints concerning advocates misconduct and deciding on application of disciplinary measure. Decisions of disciplinary chambers are made by a qualified majority (2/3) of votes of the full composition of the chamber and maybe be challenged in the HQC or in court.

²¹ <http://www.advokatura.org.ua>

²² The Law on Advocates, Articles 13 and 14.

²³ The system of advocates' qualifications and disciplinary commissions is based on the administrative division of Ukraine. Ukraine is divided into 24 oblasts (regions), and the Autonomous Republic of Crimea and the cities of Kyiv and Sevastopol enjoy a special administrative status.

²⁴ Law on Advocates, Article 13.

²⁵ Decree of the President of Ukraine "On advocates' disciplinary and qualifications commissions and High Qualification Commission" No.155/99 of May 5, 1993, Article 8.

The HQC consists of 30 members including 1 representative from each of the 27 AQDCs, 1 representative of the Supreme Court of Ukraine, 1 representative of the Ministry of Justice and 1 representative of the Union of Lawyers. The HQC has the authority to consider complaints on decisions of AQDCs or their chambers concerning admission to the bar exams, issuing of advocates' licenses, withdrawal of licenses, disciplinary liability, termination of legal practice etc. Decisions of the HQC are final and not subject to judicial review. The HQC is also responsible for the adoption of the Rules of Advocates' Professional Ethics, design of the bar examination program and maintenance of the Register of Advocates of Ukraine.²⁶

Entry to the legal profession in Ukraine

In Ukraine only advocate are subject to mandatory entry requirements. Thus, a person²⁷ who wishes to practice law as an advocate must: a) obtain a law degree from a Ukrainian university or a foreign law degree pursuant to an international treaty; b) posses at least two years of professional experience in the field of law; c) know Ukrainian language; d) successfully complete a qualifications examination; e) receive an advocate's license; and f) make an advocate's oath.²⁸ A person with a criminal record may not be an advocate and advocates may not work as judges, prosecutors, public notaries, security services or police officers and public officials.²⁹

The requirement of the law degree was further specified by the HQC, which stated that only those persons could sit for the bar exam who have obtained a "specialist" (4 years of study) or "masters" (5 years of study) degree in law specializing in "jurisprudence" from a university of 3rd or 4th level of accreditation could sit for the bar.³⁰

There are two options for satisfying the two-year professional experience requirement.

Firstly, the applicants may demonstrate that they have at least two years of professional experience working as a judge, a prosecutor, an investigator, an in-house counsel, or occupying other positions the terms of reference for which require higher legal education.³¹ Professional experience of bailiffs³² and enforcement (controlled) operations officers³³ does not constitute "professional experience in the field of law" for the purposes of admission to the bar examination. Additionally, specialists in the field

²⁶ Ibid, Article 10.

²⁷ In 2006 the Law on Advocates was amended thus eliminating the requirement that only Ukrainian nationals could become advocates.

²⁸ The Law on Advocates, Article 2 paragraph 1.

²⁹ Ibid. Article 2 paragraph 2.

³⁰ The Procedure of Taking Qualifications Examination in Oblast-Level Advocates' Qualifications and Disciplinary Commissions, Article 4 paragraph 6, adopted by the Decision of the High Qualifications Commission No.6/2 of October 1, 1999

³¹ Ibid., Article 4 paragraph 7.

³² Explanation of the High Qualifications Commission No.1/04 of September 3, 2004.

³³ Explanation of the High Qualifications Commission No.IV/9-2-2 of February 18, 2005.

of law who have been self-employed and provided legal services as a matter of commercial activity will satisfy the professional experience requirement only if they “produce sufficient and objective evidence of continuous entrepreneurial legal practice, and provide evidence that they have been paying taxes in relation to that legal practice, and if they provide documents, including case files, which would confirm that the applicant in fact carried out professional and continuous legal practice during the declared period of time”.³⁴ For the purposes of admission to the bar examination, an applicant may start collecting professional experience after completing a bachelor’s degree in law, i.e. after three years of study.

Secondly, the applicant may demonstrate that he or she has completed a two-year apprenticeship period as advocate’s assistant.³⁵ A person may commence his or her apprenticeship after receiving a bachelor’s degree in law (3 years of study). The law does not laid down any other requirements for apprentices and gives advocates a complete discretion over selection of apprentices, their number and the mode of organizing and evaluating their training. Apprentices undergo their training under employment contracts and receive remuneration for their work, the amount of which is determined by the contract but may not be less than a minimum wage.³⁶ Apprentices have the right to perform any functions of legal counsel, except for those expressly vested with advocates, i.e. participate in criminal cases.

Under either of these two options, an applicant may satisfy the professional experience requirement as early as after completing the fifth year of study and receiving master’s degree in law. Many law students use this opportunity and become eligible to sit for the bar immediately upon graduation.

In order to sit for the qualifications examination, a person must file an application with an AQDC of the oblast or city of the applicant’s residence and provide the documents that prove the satisfaction by the applicant of educational and professional experience requirements. The commission reviews the documents for the correctness of information and, if necessary, conducts additional inquiries into the applicant’s criminal record, place of work at the time of submission of the application and the place of applicant’s residence. Once the commission has determined that the applicant meets the requirements to sit for the qualifications examination, they provide to the applicant the program of the examination. Unless the applicant requests a shorter term, the commission must allow the applicant at least 30 days to prepare for the examination.

The examination consists of two parts: written and oral. First, the applicant is offered to draft three procedural documents (suits, appellate briefs, motions etc).³⁷ One of the procedural documents deals with criminal or administrative or criminal procedure law;

³⁴ Explanation of the High Qualifications Commission No.IV/9-2-1 of February 18, 2005.

³⁵ The Procedure of Taking Qualifications Examination in Oblast-Level Advocates’ Qualifications and Disciplinary Commissions, Article 4 paragraph 1, adopted by the Decision of the High Qualifications Commission No.6/2 of October 1, 1999

³⁶ The Law on Advocates, Article 8 paragraph 1.

³⁷ Program of the Qualifications Examination in oblast-level Advocates Qualifications and Discipline Commissions, approved by the minutes of the High Qualifications Commission No.6/2 of October 1, 1999 as amended on April 23, 2004

one – with commercial or commercial procedure law; and one – with civil or family or employment or land or civil procedure law. The applicant is given three hours to complete the written assignment and is allowed to use the official texts of Ukrainian legal Codes provided by the AQDC.³⁸ According to anecdotal information, however, some oblast-level AQDCs allow applicants to bring their own legal materials, including templates of procedural documents.

The written part of the examination is evaluated by the qualifications chamber according to two criteria – satisfactory or unsatisfactory.³⁹ If the chamber decides by the majority of vote that the result of the written examination is unsatisfactory, the applicant is not allowed to take the oral examination.

Subject to a successful completion of the written test, the oral examination is administered on the same day. The applicant is allowed one hour to prepare answers to 14 questions.⁴⁰ Each of the questions deals respectively with the following topics: the history and the regulation of the profession of an advocate; advocate's professional ethics; constitutional law; civil law; civil procedure; criminal law; criminal procedure; commercial law; commercial procedure; employment law; housing law; family law; administrative law; budget, tax and customs law; and environmental law.

The applicant must orally answer one question at a time, and members of the qualifications chamber may ask additional questions. The applicant must answer all questions to the satisfaction of the chamber to pass the exam. The questions asked and the applicant's answers are recorded in the written minutes of the examination. AQDCs are allowed to audio-tape the examination,⁴¹ but it is rarely done in practice.

If the applicant successfully passes the oral examination, the qualifications chamber makes a decision to admit the applicant to the advocate's profession and issues a license, during the receipt of which the applicant must make the oath. The license is issued for life within 30 days of the successful completion of the qualifications examination. If the applicant fails the exam, she may retake it in one year.

The program of the qualifications examination was prepared and approved by the HQC in 1999 and revisited once in 2004⁴². It consists of 3 sections of 23, 16 and 17 assignments respectively for the written test, and 14 sections (section per area of law) of 22 questions each for the oral test. It is within this list of questions, that each oblast-level and municipal AQDC composes individual assignment cards for written and oral tests respectively. During the exam, an applicant picks one of the individual assignments cards with 3 questions for the written part, and one assignment card with

³⁸ The Procedure of Taking Qualifications Examination in Oblast-Level Advocates' Qualifications and Disciplinary Commissions, Article 8 paragraph 2.

³⁹ Ibid., Article 8 paragraph 4.

⁴⁰ Program of the Qualifications Examination in oblast-level Advocates Qualifications and Discipline Commissions.

⁴¹ The Procedure of Taking Qualifications Examination in Oblast-Level Advocates' Qualifications and Disciplinary Commissions, Articles 9 and 10.

⁴² High Qualification Commission of Advocates, Minutes No. 6/2 October 1 1999 with revisions incorporated by Minutes No. 4/3-2 of April 23, 2004.

14 questions for the oral part. All of the questions must be from the examination program approved by the HQC, but it is up to oblast-level AQDCs to pick the questions and arrange them into individual assignment cards. In practice this means that the content of qualifications examinations may be different in different parts of Ukraine.

Information received from a number of advocates suggests that the exam is perceived as unfair, and discussions on a number of internet legal forums suggest that AQDCs are perceived as corrupt.⁴³ Although there are complaints about exams' unfairness there is anecdotal information that in 2007 very few applicants failed the exam.

According to the information provided by the Lvivska and Odeska oblast-level AQDCs, the total cost of the qualifications examination is 2,500 UAH, an equivalent of 500 USD. This could be compared with minimum monthly salary for unqualified work (525 UAH), and medium monthly salary in Ukraine in 2007 (1,351 UAH),⁴⁴ fees for one year study for law degree (from 5,000 to 10,000 UAH).

Forms of organizing the legal practice

Ukrainian law does not establish any restrictions on the form of organizing the practice of law. Both advocates and lawyers-entrepreneurs are free to engage in the solo practice or form offices. Unfortunately, no reliable statistical information is available on the number of law firms and solo practitioners in Ukraine or on the preferred forms of practice. However, it is possible to make certain conclusions from the annual rating "50 top law firms in Ukraine" conducted by the newspaper "Yuridicheskaya Praktika".

The rating for 2005 suggested that the number of lawyers in the top 50 law firms varied from 9 to 114 with an average number of up to 25 lawyers per law firm.⁴⁵ Because the rating's criteria include a number of lawyers working in the law firm and the amount of annual financial turnaround, we can reasonably suggest the law firms in the top 50 are the largest. Given the total amount of lawyers, this means that the most common form of organizing the practice in Ukraine are small office and solo practice. This situation does not seem to be significantly affected by recent tendencies for the enlargement of Ukrainian law firms⁴⁶ and the rapid expansion of international law firms into the market of legal services.⁴⁷

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<http://209.85.129.104/search?q=cache:LqIkL2EJOXAJ:www.urist.in.ua/showthread.php%3Ft%3D566+%D0%A1%D0%9A%D0%9B%D0%90%D0%94%D0%90%D0%9D%D0%9D%D0%AF+%D0%9A%D0%92%D0%90%D0%9B%D0%86%D0%A4%D0%86%D0%9A%D0%90%D0%A6%D0%86%D0%99%D0%9D%D0%98%D0%A5+%D0%86%D0%A1%D0%9F%D0%98%D0%A2%D0%86%D0%92+%D1%84%D0%BE%D1%80%D1%83%D0%BC&hl=ru&ct=clnk&cd=3&gl=by&client=firefox-a>

⁴⁴ State Statistics Committee <http://www.ukrstat.gov.ua/>

⁴⁵ <http://www.shevchenko.info/docs/YP%20Ranking%2005.pdf>

⁴⁶ Igor Shevchenko, Tendencies in the development of legal services market in Ukraine, Presentation during the IVth national legal forum "Development of Legal Services in Ukraine", February 10, 2007

⁴⁷ Ukrainian Legal Market, available on the website of the Yuridicheskaya Praktika newspaper project "Ukrainian Law Firms. A Handbook for Foreign Clients" <http://www.ukrainianlawfirms.com/review/>

The cost of legal services in Ukraine

The costs of legal services in Ukraine are regulated by the market, and neither the government nor lawyers' associations have the power to fix prices on the legal market. Unfortunately, there is a lack of reliable and generalized information on lawyers' rates for various legal actions. This information is also rarely available on websites of solo practitioners and law firms, as advertising of legal services with description of prices may be construed as unethical conduct.

Limited information on the hourly rates used by law firms is presented annually in the rating of the top 50 Ukrainian law firms. For example, in 2005 hourly rates among the top 50 firms ranged from 5 USD to 2,000USD.⁴⁸

According to the World Bank data, Ukraine, arguably, has the highest rate of attorney's fees amounting to 22.7% of the claim.⁴⁹ This number is much higher than in Poland (5), Germany (6.2), Lithuania (8.6), France (10.7), Russia (11.2) and United Kingdom (19.6).

As concerns common citizens' access to legal services, there is a general understanding that the legal costs are unaffordable to the vast majority of Ukrainian population.⁵⁰ Information received through phone interviews of middle-sized law firms that render legal services to citizens in Lviv and Odesa suggests that it would cost between 500 to 1,000 UAH (100-200 USD) to draft a law suit; one hour of courtroom representation a client would pay between 330 and 650 UAH (65-130 USD), and an hour of substantive consultation would cost from 200 to 500 UAH (40-100 USD).

Kyiv-based smaller and middle-sized law firms would charge up to 200 UAH (40 USD) for the first consultation, 1,500 UAH (300 USD) for drafting a suit and 5,000 UAH (1,000 USD) for handling a case in the court of first instance.

Legal aid

Article 59 of the Constitution of Ukraine guarantees every person the right to legal assistance, which is provided free of charge in case established by law.

There is no separate law in Ukraine which would establish eligibility criteria and the procedure for receiving legal aid, or the system for administration and evaluation of legal aid services. Instead, a number of laws guarantee varying degrees of legal aid to different categories of persons:

⁴⁸ <http://www.shevchenko.info/docs/YP%20Ranking%2005.pdf> the information on the hourly rates was provided by less than a half of the rated law firms.

⁴⁹ <http://www.doingbusiness.org/ExploreTopics/EnforcingContracts/Details.aspx?economyid=194>

⁵⁰ Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Ukraine, 10 – 17 December 2006, paragraph 20, available at https://wcd.coe.int/ViewDoc.jsp?id=1190727&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P110_5465; also see website of the Association of Legal Clinics in Ukraine <http://www.legalclinics.org.ua/eng/>.

1. indigent persons and persons who, due to other objective reasons, are not able to hire a defense lawyer are entitled to receive legal aid in the course of inquiry, pre-trial investigation and court hearing;⁵¹
2. rehabilitated individuals are eligible for legal aid in cases concerning rehabilitation;⁵²
3. war veterans eligible for legal aid on issues concerning their social protection;⁵³
4. persons who have been subject to unlawful actions of investigatory agencies, procuracy or courts are entitled to legal aid in cases concerning compensation for the damage incurred by such unlawful actions⁵⁴;
5. persons undergoing psychiatric treatment are entitled to legal aid in cases related to provision of psychiatric treatment;⁵⁵
6. persons filing documents in the process of applying for the refugee status and refugees are entitled to all kinds of legal aid;⁵⁶
7. underaged parents are entitled to legal aid in the form of court representation in cases concerning their parenthood;⁵⁷
8. persons in difficult situations including:
 - persons who are not able to take care of themselves due to their age, illness, disability or persons who have no relatives to provide care and assistance to them;
 - persons who experience hardships due to unemployment and are registered with the state employment service as seeking job, and persons suffering hardships as a result of natural disasters and catastrophes ;
 - persons who are refugees due to the armed or interethnic conflicts when their monthly income is below the subsistence level;
 - children and young people who experience hardships due to a physical disability, illness, orphanhood, homelessness, low incomes, conflicts and family violence;⁵⁸
9. foreign nationals are eligible for legal aid in accordance with Ukraine's international treaties on legal aid in civil and criminal cases.

While these laws proclaim the substantive right of various categories of people to legal aid in criminal and civil matters, the funding and the mechanism exist only for the

⁵¹ Criminal Procedure Code of Ukraine, Article 47, paragraph 4, sub-paragraph 2.

⁵² The Law of Ukraine “On Rehabilitation of Survivors of Political Repressions in Ukraine”, Article 6, paragraph 6.

⁵³ The Law of Ukraine “On Status of War Veterans and Guarantees of Social Protection for Them”, Article 22, paragraph 2.

⁵⁴ The Law of Ukraine “On Procedure for the Compensation for Damage Inflicted on Citizen by Illegal Action of Inquiry Bodies, Bodies of Pre-Trial Investigation, Procuracy and Court”, Article 3, paragraph 4.

⁵⁵ The Law of Ukraine “On Psychiatric Assistance”, Article 25, paragraph 3.

⁵⁶ The Law of Ukraine “On Refugees”, Articles 18, 20.

⁵⁷ The Family Code of Ukraine, Article 156.

⁵⁸ The Law of Ukraine “On Social Services”, Article 5, paragraph 4. These categories of individuals are eligible for legal aid in the form of consultations on provisions of effective legislation, protection of rights and interests, help in enforcement of state force and execution of legal responsibility of a person committing illegal action with regard to such individual (filing of legal documents, assistance in legal defense, protection of personal rights and interests etc.).

delivery of legal aid services in criminal cases.⁵⁹ The system of legal aid in civil cases does not function in Ukraine.

Under Ukrainian law, legal aid in criminal matters is provided through the procedure of appointment of *ex officio* defense counsels. A defense counsel is appointed by the inquiring, or investigating officer, or the court in two situations:⁶⁰

1. If, according to the law, participation of the defense counsel is mandatory in the criminal case, but the suspect/accused/defendant either does not wish or is unable to invite a defense counsel. These cases include:⁶¹
 - in cases involving suspected or accused minors - from the moment of when the minor is officially pronounced a suspect or when a charge is brought against him/her;
 - in cases concerning crimes committed by individuals who due to their physical or psychological disabilities (dumb, deaf, blind, etc) are not able to independently exercise their right to defense – from the moment of the individual’s detention or when a charge is brought against him/her or from the moment when the said disabilities are established;
 - in cases involving persons who do not understand the language, in which legal proceedings are conducted – from the moment of detention or of a charge brought against him/her;
 - when the possible penalty for the crime of which a person is being suspected or accused is life imprisonment – from the moment of detention or of a charge brought against him/her;
 - in ceases when an individual may be subjected to compulsory medical treatment – from the moment when the fact of the individual’s mental disorder was established;
 - in cases involving the application of mandatory educational action – from the first interrogation of a minor or from the moment of placing him/her in remand house.

2. If the suspect/accused/defendant wishes to invite a defense counsel but is unable to do so due to the lack of funds, or is unable to do so by virtue of other objective reasons.

According to the law, the burden of providing legal aid services lies on the advocates, as the request for an *ex officio* attorney must be transmitted to the local advocates’ chamber (“*advokatske ob’ednannia*”). This procedure is obsolete, because the post-Soviet Law on Advocates no longer requires advocates to exercise their profession solely through advocates’ chambers. Since advocates are now free to choose any organizational form of their legal practice, the advocates’ chambers turned into a form of voluntary collective form of practice, and simply no longer exist in certain locations

⁵⁹ Decree of the President of Ukraine No. 509/2006 of June 9, 2006, “Concerning the Concept Paper on the Establishment of Legal Aid System in Ukraine”, Section II.

⁶⁰ Criminal Procedure Code of Ukraine, Article 47 paragraph 4.

⁶¹ *Ibid*, Article 45.

of Ukraine.⁶² This makes it practically impossible to ensure the provision of access to legal aid services in those locations.

The requirement that the request for an *ex officio* counsel is channeled through advocates' chambers does not exclude solely practicing advocates from rendering legal aid.⁶³ In fact, an unjustified refusal by a privately practicing advocate to act as an *ex officio* counsel constitutes a ground for disciplinary proceedings.⁶⁴

The amount of compensation for the legal aid services of *ex officio* advocates is 15 UAH (roughly 3USD) per full working day.⁶⁵ In order to collect compensation for legal aid services, the advocate must obtain a copy of the initial decision on granting legal aid issued by the inquiring or investigating officer, the prosecutor or the court. Additionally, the advocate must obtain a certificate from the person who granted legal aid (one of the persons enumerated above), confirming that the advocate participated in the case. These documents are then sent to the Chair of the advocates' chambers, with which the *ex officio* advocate is associated, or to the *ex officio* advocate her/himself if she/he is a sole practitioner. Having received these documents, the Chair of the advocates' chambers or the advocate must complete a billing report in three copies. One copy of the billing report is used to request the payment from an oblast-level department of justice, another copy is forwarded to the person who granted legal aid in the case, and one copy of the report remains on file in the advocates' chambers or in the office of privately practicing advocate.⁶⁶

The oblast-level department of justice wires the requested amount of compensation to the account of the advocates' chambers within 10 days after the receipt of the billing report and the supporting documents. The law also allows for the recovery of legal aid costs from the advocate's client if the latter was ultimately found guilty.⁶⁷

Under these circumstances, advocates often decide to save time and never claim the compensation. According to the statistics of the Ministry of Justice, in 2004 out of available budget of 957,600 UAH advocates claimed only 285,702 UAH in compensation for legal aid services.⁶⁸ Moreover, according to the ministerial statistics, out of budgeted 1,960,900 UAH for legal aid per year only 233 700 UAH was claimed

⁶² Olga Saenko, *The Legal Aid Legislation: Hopes and Risks*, available at <http://www.jurfirma.com/ua/articles/27>

⁶³ Explanation of the High Qualifications Commission No. IV/9-2-7 of February 18, 2005 "On the Obligation of Advocates to Comply with Requirements of Article 47 of Criminal Procedure Code".

⁶⁴ Id.

⁶⁵ Resolution of Cabinet of Ministers of Ukraine No.821 of May 14, 1999 "On the Establishment of the Order for Compensation of the Work of Advocates who Provide Legal Aid in Criminal Matters", Article 3 paragraph 1.

⁶⁶ Ibid., Articles 1 and 2.

⁶⁷ Ibid., Article 4.

⁶⁸ *Access to legal aid in criminal process on the territory of Ukraine* (Center for political and legal reforms; Center on legal reform and legislative work at the Ministry of Justice of Ukraine; Kharkiv human rights group). Kyiv 2005, pp.40-41.

by advocates in 2005 (1,827 cases); 163,700 UAH - in 2006 (1,591 cases); and 48,600 UAH in the first half of 2007 (512 cases).⁶⁹

Reform agenda

The need to reform the legal profession and the legal aid system have been in the spotlight of attention of Ukrainian legal community and the government for over ten years.

The Law on the Bar was adopted in 1992 and outlined just basic principles of advocates' practice and did not establish a unified legal profession. Back then, the majority of lawyers felt no need to create a single professional Bar Association due to the fear of continuing control over the Bar by the State, as it was under the Soviet regime. According to the Law, the *Advokatura* of Ukraine is a voluntary professional public association. The Law failed to provide for a clear structure of this "association" vesting it with no virtually self-regulatory functions.

In 1995 Ukraine joined the Council of Europe and committed to respect the general obligations under its Statute concerning the rule of law, human rights and fundamental freedoms. Additionally, Ukraine undertook to comply with certain specific requirements of the Council of Europe, including the establishment of a professional bar association.⁷⁰

Largely owing to these new international commitments, efforts have been put forth in Ukraine to reform its legal profession and since 2003 Verhovna Rada of Ukraine has been bombarded with amendment proposals and draft laws on advocates. There were nearly 10 draft laws on advocates registered in the Verhovna Rada between 2003 and 2006.⁷¹ These drafts were prepared by different lobby groups who represented competing interests of various segments of the legal profession, and as a result, none of them was ever adopted. The Council of Europe noted this situation and called upon the government of Ukraine to "establish a professional Bar association, by adopting a new law on the Bar without further delay".⁷²

The issues of disagreement between different drafters of the laws on the Bar traditionally included the entrance requirements; mandatory vs. voluntary Bar membership; professional responsibility; organization of advocates' professional development; admission of foreign lawyers to the legal profession; rules concerning

⁶⁹ Ministry of Justice Press-service http://www.kmu.gov.ua/control/publish/article?art_id=87327717 ; *On interpreting statistics*, an article prepared the Ukrainian Helsinki Human Rights Union, available at <http://www.helsinki.org.ua/en/index.php?id=1186061102>

⁷⁰ Opinion No. 190 (1995) of the Parliamentary Assembly of the Council of Europe on the application by Ukraine for membership of the Council of Europe, Paragraph 11. IX.

⁷¹ Oleksandr Vodyannykov, "Running in circles: reform of the advocates' profession in Ukraine in the light of European standards", March 2007, available at <http://www.sokol-law.org/content/view/73/80/>

⁷² Resolution 1466 (2005) of the Parliamentary Assembly of the Council of Europe, Honouring of obligations and commitments by Ukraine, Paragraph 13.3.

personal liability and professional insurance etc.⁷³ As of April, 2008, there was one draft Law on the Bar registered at Verhovna Rada, submitted by MP Yuiry Miroshnichenko.

The new Law on the Bar not only has to correspond to the internationally recognized principles but at the same time it has to be accepted by Ukrainian legal community at large. The reform of the legal profession in Ukraine has always been and remains to be a matter of compromise between the key players such as the Union of Advocates of Ukraine, the Ukrainian Bar Association, the Union of Lawyers of Ukraine and the Ministry of Justice.

The first signs of such compromise appeared in the beginning of 2008, when the Ukrainian Bar Association and the Union of Advocates of Ukraine signed a Memorandum Regarding the Conceptual Provisions of Reforming the Legislation on the Bar.⁷⁴ The Memorandum asserts the desire of the two organizations to work in close consultation with each other in developing a brand new version of the Law on the Bar disregarding the draft currently registered at the Parliament. Most importantly, the Memorandum outlines the issues of reform which have been agreed on and clearly illustrates principal differences.

According to the Memorandum, the Union of Advocates of Ukraine and the Ukrainian Bar Association have no principle disagreements as regards the need to: establish uniform entrance requirements for the practice of law in Ukraine; restrict the practice of law to licensed advocates only; vest the Bar Association with the power to issue decision binding upon all advocates; exclude representatives of the executive branch of government from qualifications and disciplinary commissions of advocates; expand professional rights of advocates and strengthen their guarantees of independence; provide for a special taxation mechanism for advocates; provide for effective legal aid system based on administration of legal aid by the Bar Association instead of governmental agencies; abolish the term “specialist in the field of law” from Ukrainian legislation etc.

As a result of consultations, the two lawyers’ associations were able to reach agreement on virtually all aspects of the new Law on the Bar, with the exception of the structure of self-governing bodies of the Bar Association and certain aspects of the forms of practice of law.⁷⁵

⁷³ *Analysis of the Draft Laws of Ukraine on the Bar*, p. 13, Legal Assessment Series of ABA Rule of Law Initiative/Office of Research and Program Development, September 2007.

⁷⁴ Memorandum Regarding the Conceptual Provisions of Reforming the Legislation on the Bar as Agreed by the Union of Lawyers of Ukraine and the Ukrainian Bar Association, January 29, 2008, available at <http://www.ukradv.org/up/docs/mem290208.pdf>

⁷⁵ Interview of the legal weekly newspaper “Pravovyi Tyzhden” with Tetiana Varfolmееva, President of the Union of Advocates of Ukraine, available at <http://209.85.129.104/search?q=cache:Oguh31Y7pO8J:www.legalweekly.com.ua/article/%3Fuid%3D305+%D0%A1%D0%9A%D0%9B%D0%90%D0%94%D0%90%D0%9D%D0%9D%D0%AF+%D0%9A%D0%92%D0%90%D0%9B%D0%86%D0%A4%D0%86%D0%9A%D0%90%D0%A6%D0%86%D0%99%D0%9D%D0%98%D0%A5+%D0%86%D0%A1%D0%9F%D0%98%D0%A2%D0%86%D0%92+%D0%84%D0%BE%D1%80%D1%83%D0%BC&hl=ru&ct=clnk&cd=27&gl=by&client=firefox-a>

On the one hand, the Ukrainian Bar Association supports the system of governance based on regional (oblast-level, Crimean, Kyiv and Sevastopol) Bar Associations. On the national level the Bar would be represented by the General Assembly of Advocates, the Appellate Chamber and the High Council of Advocates – organs vested mostly with representative and appellate functions. The Union of Advocates on the other hand, suggests establishing of the National Bar Association as a cornerstone governing body, and supplementing it with regional Bar Associations. Thus all practicing advocates would have to join the National Bar Association once admitted to practice.

Finally, the Union of Advocates proposes to eliminate such forms of legal practice as, for example, limited liability companies or work under employment contracts in law office. Instead, new and limited forms of organizing practice are put forth. The President of the Ukrainian Bar Association does not share this limiting approach, but he himself admits that even within his organization there is unconditional unity behind this issue.⁷⁶

The vision of the Union of Lawyers of Ukraine on these two issues leans towards the position of the Union of Advocates.⁷⁷

The ongoing consultations between most powerful lawyers' associations give hope that the compromise could be reached, and a unified vision of the future legal profession developed. It is hoped that a recent statement of the Ukrainian Bar Association alleging that the Union of Advocates has unilaterally expressed its support to the draft law registered in the Parliament will not impede the consultation process.⁷⁸

Legal aid reform has been and remains to be another area of debate and improvement efforts in Ukraine.

On January 24, 2006, in response to the Resolution of the Council of Europe⁷⁹ and pursuant to the Decree of the President⁸⁰, the Ministry of Justice of Ukraine established a Council on coordination of the legal aid reform.⁸¹ Even before the Council was officially established, the International Renaissance Foundation in partnership with the

⁷⁶ Interview with Sergey Kononov, President of the Ukrainian Bar Association, published in a weekly newspaper "Yuridicheskaya Praktika" No.16(538) of April 15, 2008; available at <http://www.yurpractika.com/article.php?id=100094383>

⁷⁷ Another round of consultations on the Bar reform was held by the Union of Advocates, Ukrainian Bar Association and the Union of Lawyers on April 8, 2008, information available at <http://www.uba.ua/newsite/cms/content/view/664/30/>

⁷⁸ On April 10, 2008, the Ukrainian Bar Association warned the Union of Advocates of Ukraine that in case the Union will continue the expression of support to the draft already in Verhovna Rada (which is not a joint draft), the Ukrainian Bar Association would introduce its own draft into the Parliament. Available at <http://www.uba.ua/newsite/cms/content/view/666/30/>

⁷⁹ Resolution 1466 (2005) of the Parliamentary Assembly of the Council of Europe, Honouring of obligations and commitments by Ukraine, Paragraph 13.3

⁸⁰ Decree of the President No.39 of January 20, 2006 "Concerning the Plan of Actions for the Performance by Ukraine of its Commitments and Obligations Stemming from the Membership in the Council of Europe".

⁸¹ Order of the Ministry of Justice No. 58/7 "On Measures Towards the Legal Aid Reform".

Ministry of Justice and the financial support from Open Society Justice Initiative and the Soros Foundation, commissioned a detailed analysis of *de jure* and *de facto* state of the legal aid system.⁸²

The analysis revealed all problematic areas in the existing legal aid system and served as a firm foundation for the development of the Concept Paper on the Formation of Legal Aid System. The Concept paper stated the legal aid system of Ukraine did not meet European standards due to limited access to legal aid services, low level of advocates' remuneration and complicated procedure for claiming lawyer's fees, as well as the lack of effective mechanism of administration of legal aid system.⁸³

At the same time, the Soros Foundation provided funding to set up three pilot public defender offices in Harkiv, Bila Tserkva and Khmelnytskyi. The main purpose of these pilot projects is to accumulate practical information on the administration and delivery of legal aid services through public defender offices and use that information in the design of the legal aid system, which would best fit into the Ukrainian legal system.

While the pilot projects were under way, the Center for Legal Reforms and Legal Drafting prepared a rough draft of the Law "On Legal Aid" and posted it on its website to facilitate a wide public discussion. Reform of the legal aid system in Ukraine remains a priority for the Center for Legal Reforms and Legal Drafting, but before the draft may be finalized, the Ministry of Justice is planning to analyze the results of operation of the pilot public defender offices.⁸⁴ At the same time, pursuant to the Order of the Cabinet of Ministers, the draft Law "On Legal Aid" must be submitted to the Cabinet by December 2008.⁸⁵

⁸² *Access to legal aid in criminal process on the territory of Ukraine* (Center for political and legal reforms; Center on legal reform and legislative work at the Ministry of Justice of Ukraine; Kharkiv human rights group). Kyiv 2005.

⁸³ Decree of the President of Ukraine No. 509/2006 of June 9, 2006, "Concerning the Concept Paper on the Establishment of Legal Aid System in Ukraine"

⁸⁴ <http://legalreform.gov.ua/main.php?pt=26>

⁸⁵ <http://www.minjust.gov.ua/0/10889>