



UKRAINIAN NATIONAL BAR ASSOCIATION

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EUROPEAN PRESIDENTS' CONFERENCE 2016 COUNTRY REPORT: UKRAINE

INTRODUCTION

Ukrainian National Bar Association (UNBA) is a non-governmental self-governed non-profit professional organization established in December 2012 on the basis of the Law of Ukraine “On the Bar and Practice of Law”. Membership is mandatory, thus UNBA comprises all Ukrainian attorneys, at the moment totaling over 32,000.

Annual membership fee for 2016 is around 50 EUR, of which 70% is paid to the regional bar council and 30% - to the Ukrainian National Bar Association.

The ruling body of the UNBA is the Bar Council of Ukraine, a collegial body comprised of 30 elected attorneys. Decisions adopted by the Bar Council of Ukraine are binding upon every attorney in Ukraine. UNBA promotes:

- Development and strengthening of the legal profession
- Raising the quality of legal services provided by attorneys
- The role and authority of the legal profession in society
- Protection of rights and legal interests of its members.

UNBA admits to the bar and carries out disciplinary proceedings regarding its members through regional bodies of attorneys' self-government in Ukraine.

CONSTITUTIONAL REFORM

The President of Ukraine formally submitted a proposal to amend the Constitution of Ukraine concerning administration of justice on November 11, 2015. On January 22, 2016, Constitutional Court of Ukraine has approved the proposed changes and sent the bill to the parliament. If adopted, attorneys in Ukraine will have exclusive rights to represent clients in the courts of Ukraine.

Draft bill provides for a possibility of exceptions to the rule, namely for labor disputes representation, social rights protection, for cases concerning elections and referenda, minor cases, cases concerning representation of minors, as well as disabled and incapacitated persons.

If adopted, the provisions will only fully come into effect starting January 1, 2020. Representation by attorneys in the Supreme Court of Ukraine and courts of cassation instance will be mandatory starting January 1, 2017; in appellate courts – starting January 1, 2018; in courts of first instances – starting January 1, 2019. Starting January 1, 2020, even government bodies and bodies of local self-government will be required to be represented by attorneys.

At the moment, court representation by an attorney is only required in criminal proceedings. Commercial, civil and administrative proceedings may involve parties being represented by persons not admitted to the bar.

UNBA has expressed its concern regarding the current system since its establishment. Notably, CCBE has expressed its support to the UNBA's position and [addressed](#) the President of Ukraine on March 26, 2015 regarding this issue.

UNBA has thus been on the forefront of promoting qualified court representation and is pleased to see the proposed changes to the Constitution of Ukraine concerning administration of justice.

THREAT TO THE INDEPENDENCE OF THE BAR

In 2015, UNBA has expressed its grave concern on numerous occasions regarding the current Legal Aid system in Ukraine. This has been a topic of discussion during UNBA official visits to the Council of Europe, United States, Germany, Italy, Georgia and Belarus.

A [special report](#) on the subject was approved by the Bar Council of Ukraine on November 13, 2015. The legal aid system that currently exists in Ukraine is not transparent, inefficient, bureaucratic and corrupt. Moreover, this system leads in practice to violations of human rights and professional rights and guarantees of legal aid attorneys, and to the state interference with, and control of, the legal profession as an independent profession.

In the legal aid system, the cases are distributed to attorneys by state-appointed officials, thus leading to some attorneys having more than 400 cases per year when some have 0. Remuneration of the attorneys in the system (\$1.20 hourly rate) also leads to attorneys just getting clients through the system and then signing regular contracts with them with higher remuneration. Thus, essentially, the system functions as free advertisement for attorneys that are close to the state-appointed officials that run legal aid centers.

Also basic human rights are violated when an attorney submits his documents to a state-appointed official for review in order to receive his remuneration. These officials, the majority of whom are not attorneys themselves, are not subject to attorney-client privilege. Thus, sensitive information is disclosed and it not covered by attorney-client privilege, which in turn violates the rights of the client.

Current legal aid system also poses a threat to judicial independence, as Congress of Attorneys of Ukraine, apart from electing the leadership of the Ukrainian National Bar Association, also appoints three members to the High Council of Justice of Ukraine, two members to the High Qualification Commission of Judges of Ukraine and one member to the Qualification and Disciplinary Commission of Prosecutor's Office. All of these government bodies are in charge of administration of justice in Ukraine and are the pillars of judicial system.

Thus, through attempts of gaining control of the bar in Ukraine, the legal aid system, run by the Ministry of Justice of Ukraine, is trying to influence the judicial system.

Unfortunately, Criminal Procedure Code, adopted during President Yanukovich's regime, still provides for a possibility for a state to appoint a legal aid attorney for a certain procedural action even though the client already has representation by his personal attorney. This mechanism is still being used in some very high profile cases.

The Report prepared by the UNBA proposes, a number of measures which will ensure a more effective, transparent and useful operation of this system and which will eliminate pressure and interference of the State with the independent professional activities of attorneys, as well as the corruption element that currently exists within the system.

2015 ANNUAL CONFERENCE

An event was held on December 17, 2015 where UNBA presented its 2015 Annual Report. A 131-page [document](#), which will soon be available in English, covers all activities of the organization as well as all regional bodies of attorneys' self-government in Ukraine.

The report also includes financial reports, statistics as well as highlights the institutional achievements of the UNBA in 2015.

EVENTS

In 2015, UNBA organized 44 events, which almost 6,000 attorneys attended. The events are organized by the UNBA throughout the year in every region of Ukraine to ensure that every attorney in Ukraine is able to attend. Events, organized by the Ukrainian National Bar Association are free for Ukrainian attorneys.

In comparison to previous year, in 2015 more events have been organized in cooperation with the Council of Europe, CCBE, IBA, Supreme Court of Ukraine, EU Project “Support to Justice Sector Reforms in Ukraine”.

CONTINUING LEGAL EDUCATION

CLE is mandatory in Ukraine and every attorney must submit a report to their regional bar council on the CLE activities that he/she has carried out during the previous year until January 31st.

In 2015, UNBA held 14 CLE conferences throughout Ukraine. In 2016, UNBA plans to launch a new online CLE platform for attorneys, pioneered by the UNBA Next Gen Initiative. This will allow attorneys from distant regions to save travel time and thus promote easier access to CLE.

RECENT VIOLATIONS OF PROFESSIONAL RIGHT OF ATTORNEYS

Lately, an increasing number of attorneys have addressed UNBA in connection with their profession rights being violated by the prosecutor’s office. In a certain high profile case, attorneys have been summoned as witnesses in a criminal proceeding against their client – Ukrainian businessman and politician.

Such actions of law enforcement and prosecutor’s office officials threaten one of the most fundamental principles of attorneys’ professional activities – the attorney-client privilege. In addition to that, the law directly prohibits identifying an attorney as his/her client, prohibits any interference with his/her legal position. An attorney may also not be brought to or threatened with criminal or any other liability in connection with the practice of law where he/she acted in accordance with the law.

In this regard, UNBA has addressed the Prosecutor General’s Office, as well as published an open letter addressed to the International Bar Association, Council of Bars and Law Societies of Europe and international community in order to draw their attention to such blatant violations of the attorney’s professional rights by the state.

INTERNATIONAL ACTIVITY

Ukrainian National Bar Association is actively expanding its international presence. In 2015 alone, UNBA has established partner relations with foreign national bar associations (UK, USA, Italy, Georgia, Belarus, Kazakhstan), international institutions (Council of Europe, EU Projects, USAID, Human Rights First etc.) and has been admitted as a full member of the International Bar Association.

Also in 2015 UNBA submitted an application to obtain a status of an observer member in CCBE and continues to foster relationships with BRAK in Germany, which proved to be an important and valuable strategic partner.

Ukrainian Bar is relatively new, finally gaining its independence and self-governance after decades of being controlled by the state. A strong and independent bar is extremely important for successful judicial reform in Ukraine in light of the European integration course adopted by our society.

International support is thus essential, as there are many external factors and influences that do not wish the UNBA to succeed.

Ukrainian National Bar Association
4-6 February 2016
Vienna, Austria