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Country Report on current developments around the legal profession in Ukraine and UNBA in particular

Intro

For Ukrainian Bar, the year 2020 was marked with accomplishments, as well as presented various challenges. In 2020, for the first time, the UNBA membership surpassed the 58,000 figure; a new continued legal education system was introduced; draft law #9055 was called off.

Unfortunately, the legal status of the Bar is still under question due to draft law on cancellation of so-called 'advocacy monopoly'. Also, crimes against advocates carrying out their professional activity still occur and are still poorly investigated.

Draft Law 9055

'Corruptogenic' Draft Law of Ukraine 'On the Bar and Practice of Law' #9055 developed with significant violations of procedure, containing provisions aimed at the severe undermining of the constitutional status of Ukrainian Bar, presented by the former President of Ukraine to Verkhovna Rada of Ukraine as 'urgent', was called off on the first day after inauguration of the 6th President of Ukraine. This is a predictable and inevitable finale devised out of political necessity, rather than the need to improve the operation of a Constitutional body.

Cancellation of Advocacy Monopoly – amending Constitution

'Advocacy Monopoly' – loose term in Ukrainian legislation and public discourse, referring to the exclusive right of advocates to represent clients in court and defend against criminal prosecution, as enshrined in the Constitution of Ukraine art. 131-2. This provision found its way into the Law as a result of amendments introduced by draft law #1401-VIII from 02.06.2016. These changes were meant to improve the constitutional basis of justice and ensure the realization of the rule-of-law-principle and guarantee everyone the right to a fair trial by an independent and unbiased court.

In September 2019, President Volodymyr Zelensky proposed draft law No. 1013 "On the Abolition of Advocate's Monopoly", with the purpose to ensure everyone's right to receive professional legal aid through the cancellation of advocacy monopoly for rendering such aid. To date, the draft law has not been adopted.

CPD

Procedure for Continuing Professional Development, adopted by Decision of the Bar Council of Ukraine #20 from 14 Feb 2019, established new rules for developing professional qualifications of the licensed advocates in Ukraine. To administer the above process, the Higher School of Advocacy (HSA) was established. Among other powers delegated thereto by the Bar Council of Ukraine, HSA developed and maintains a digital platform for hosting relevant events, event management system and stores the CPD results, that are subsequently transferred to the Unified Register of Advocates of Ukraine. The new system allowed for systematization and proper certification of CPD events across the nation, as well as centralized automated control of CPD points accrual, reflection of advocate's CPD activity in URAU profile.

e-Justice

The world pandemic of COVID-19 stimulated the development of the electronic justice system in Ukraine. UNBA has established an active dialogue and cooperation with the High Council of Justice, the State Justice Administration of Ukraine, the Council of Judges of Ukraine, State Enterprise "Information Judicial Systems" and promoted development of the system;

UNBA contributes to e-Justice working group comments and proposals for changes to the procedural codes and the Regulations on the UJITS (Unified Justice Information and Telecommunication System);

The following functions are expected to be launched soon:

- creation of electronic cabinet for advocates within the "Electronic Court" subsystem - registration as an advocate (not just as an individual);
- ensuring verification of advocate's powers in the "Electronic Court" subsystem through the Unified Register of Advocates of Ukraine.

The following projects are expected also to be completed in 2021:

- assigning an "official e-mail address" to each advocate (the official e-mail address will be the one listed in URAU);
- opening of the "Electronic Court" subsystem to assistant advocates.

Violations of advocates' rights

During 2020, the UNBA Committee on the Protection of Advocates' Professional Rights and Guarantees received 89 appeals, about:

1. Destruction of advocates' property – 5;
2. Threats to advocates – 14;
3. Physical violence – 9;
4. Covert investigative actions – 8;
5. Criminal prosecution of advocates– 7;
6. Attempted murder – 1;
7. Murder – 0;
8. Searches of advocates' premises – 6;
9. Interrogation of advocates as witnesses in cases where they act as defenders:
 - a. Interrogation – 1;
 - b. Summon for interrogation– 5;

Over the course of 9 months of 2020, local Bar Councils received 97 such appeals. The Bar Council of Ukraine received 83 such appeals.

Also, the official UNBA website was attacked on March 4th, 2020. UNBA swiftly restored it, as well as renewed availability of URAU. Investigation is still ongoing.

COVID-19 response

Via its Charitable Fund, UNBA reached out to advocates in need and provided targeted financial assistance for 10 cases of advocates from Kherson, Rivne, and Odesa regions experiencing hardship. Also, UNBA assisted advocates from Ivano-Frankivsk, Ternopil, Chernivtsi, Vinnytsia, Zhytomyr and Volyn regions with sanitizers, food packs, medical masks and gloves.

Another aspect of UNBA's activity – roundtables with judicial organizations to tackle the problem of courts' failure to find COVID-19 infection or lockdown as justifiable grounds for clients and advocates not to appear before the courts.

Double taxation abolished

On May 13, 2020, Verkhovna Rada of Ukraine adopted Law #2166 "On Collection and Accounting of the Single Contribution for Compulsory State Social Insurance (concerning the elimination of discrimination among payers)". Thus, the Parliament solved the problem of double payment of the said tax, by establishing that regardless of the number of registrations with the tax authorities, the single social contribution is paid by a self-employed person only once. As per current law, advocates may practice as self-employed, thru a law firm/law office.