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COUNTRY REPORT

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

Intro

Given the war waged by Russian Federation against Ukraine, we can safely say that the year 2021 was quite uneventful for Ukrainian Bar, the period of prosperity and growth. Legal community of Ukraine passed the mark of 65,000 licensed members, more than double in number since 2013. After the war, the numbers changed, for a variety of reasons.

The Bar in times of war

Despite the hardships of war, martial law, Ukrainian advocates continue their constitutional mission of defending from criminal charges, protecting legitimate rights and interests. The Bar Council of Ukraine secured the archives and records of the Bar, limited access to the Unified Register of Advocates of Ukraine to prevent any kind of abuse of the personal data. Second, the Bar Council established the Single Information Center for advocates consolidating information about violations of advocate's rights and providing accurate information on security risks. The Council also emphasized that advocates should use proven sources of information and not to succumb to manipulation and hostile propaganda, as waves of enemy manipulative information citing no sources or originating from sources without reputation or history sweep across the media from time to time.

Easing regulations

The Bar Council also relaxed some procedures allowing to facilitate the operation of the institution and admission of new members to the Bar, relaxed some formal requirements for enlisted advocates, established structure to assist advocates that found themselves in hardship – i.e. loss or damage of housing, wounded or sick, as well as helping families of advocates killed in action, and elderly advocates with no means of subsistence. The Bar also coordinates international efforts to assist internally displaced persons, operates its representative offices abroad to help refugees from Ukraine, distributes international help to those in need nationwide.

International help

Ukrainian Bar is deeply grateful to our international colleagues for their firm opposition of Russian aggression in Ukraine, generous donations, and providing their homes to host Ukrainian refugees.

Challenges to the rule-of-law

Martial law imposed on the entire territory of Ukraine by the Decree of the President of Ukraine #64/2022 of 24.02.2022. The imposition of martial law did not stop the administration of justice, the activities of the prosecutor's office, and the pre-trial investigation. Given the existing danger to the judiciary and the parties, information on the status of court proceedings typically published at the official web portals, as well as the Unified Register of Court Decisions is now unavailable to the general public.

The decision to restrict access to the Register was made in a secretive way and created obstacles for the effective work of advocates during martial law. In particular, it is impossible to gain access to the legal positions of the Supreme Court, and this despite the fact that they should be considered in judicial practice and form appropriate case-law. Until now, access has not been renewed for the defenders, despite the fact that law enforcement officers and judges keep having access to the Register, despite quite hostile new conditions. Although the constitutional right to judicial protection and professional legal assistance cannot be restricted during martial law, in fact these rights have been suspended to say the least.

Legal innovations raise serious concerns about the future of the rule-of-law in Ukraine.

The Criminal Procedure Code states that evidence obtained as a result of a significant violation of human rights and freedoms is inadmissible.

Before the imposition of martial law, the court in rendering final verdict could not use the testimony given in the pre-trial investigation without further confirmation thereof in a courtroom. But during martial law, unfortunately, we had unpleasant changes. The court now can accept the testimony obtained during the interrogation at the pre-trial stage as evidence if the course and results of such interrogation were recorded. The court is also allowed to use the suspect's testimony if the defense counsel participated in such a recorded interrogation.

Currently, the implementation of criminal proceedings under martial law involves a significant increase in the procedural capacity of the prosecution and the simplification of several procedures.

The prosecutor has the right to choose a measure of restraint without an objective possibility for the investigating judge to exercise his powers. In particular, the prosecutor may independently choose a measure of restraint in the form of detention up to 30 days for a person suspected of commission of grave and special grave crimes if a delay in choosing a measure of restraint may result in loss of evidence or escape.

The prosecutor can apply a similar competence to the continuation of a preventive measure in the form of detention, previously selected by the investigating judge. Extension of the term is allowed for up to one month and may take place repeatedly within the pre-trial investigation.

The prosecutor now also received the right in the absence of the judge to exercise his powers to decide on issues related to the implementation of the case; temporary access to things and documents; seizure of property; granting permission to enter a person's home or other property; granting a search permit; taking samples from items and documents; permission to conduct a covert investigative (search) action; to extend the pre-trial investigation.

Ukrainian National Bar Association declares that such legislative changes will lead to restricting constitutional rights and freedoms. It is rather risky step on the part of the legislator. We understand that all those guilty of criminal offenses should be held accountable, but the issue of interfering with the rights and freedoms of such persons should be the sole responsibility of the court. We can only hope that the prosecutors will take their powers seriously, but we do not leave any doubt that there will be no abuse on their part.

Justice System

In times of war, the justice system found itself squeezed between the reality of Russian invasion and institutional crisis. According to the data published by the judiciary, in connection with active hostilities, courts cannot administer justice in ten regions of Ukraine. In addition, eleven court premises were destroyed or damaged. Just before the war, the High Council of Justice, responsible for admission of judges, their appointment, relocation, disciplinary proceedings and the like, became non-functioning, since some of its members resigned in protest against prevailing foreign influence over decision-making within the body and certain unorthodox practices, allegedly subjecting them to foreign power; it has led to the fact that the powers of this constitutional body were re-distributed among several institutions within the judiciary. In particular, the Head of the Supreme Court is now empowered by law to change the territorial jurisdiction of cases and courts. More than 130 courts in Ukraine have changed their territorial jurisdiction to date.

State-run Free Legal Aid system became heavily indebted, as advocates do not receive compensation for work, since the relevant budget expense item is attributed by the state as 'unprotected,' thus left unpaid.

With this problem, we have already appealed to the Government that the state does not write these funds into debt, which will one day be repaid, but rather immediately pays advocates who work for citizens and carry out their constitutional duty. This situation is different region, but it should be said with pride that even where the debt is not paid by the State, advocates still work in the Free Legal Aid and provide legal advice.

Conclusion

Ukrainian National Bar Association continues operation, secured its records, and eased a number of procedures, keeps on opposing questionable amendments to legislation, aid the advocates in distress, coordinational relief effort both at home and abroad. We feel that even in war time all the members of justice system and the legislator should jointly work towards strengthening the rule-of-law, which is the cornerstone of our society. It is one of those values that our Armed Forces so vigorously protect two months and counting.