



52nd European Presidents Conference 2024 in Vienna

Country report On current developments around the legal profession in Ukraine and UNBA in particular

Changes to criminal procedure

Otherwise known as "Lozovyi amendments" to Criminal Procedure Code, which limited the investigation duration, changing the starting point from entering data into the URPI (Unified Register of Pre-trial Investigations) to the service of suspicion notice. Canceling the established terms of pre-trial investigation in criminal proceedings regarding crimes against peace and security of humanity will lead to an imbalance of established principles and legitimize the inaction of the pre-trial investigation bodies.

The UNBA Committee on Criminal Law and Procedure so concluded based on the results of the analysis of draft law No. 9314-3 "On Amendments to Certain Articles of the Criminal Procedure Code of Ukraine regarding the peculiarities of calculating the terms of pre-trial investigation under martial law". The project proposes to stop calculating the duration of the pre-trial investigation in criminal proceedings regarding the crimes provided for in Art. 437 (planning, preparation, initiation and waging of an aggressive war), Art. 438 (violation of laws and customs of war), Art. 439 (use of weapons of mass destruction) and Art. 442 (genocide) of the Criminal Code. It concerns cases when information about these crimes was entered into the URPI, but no person was notified of the suspicion both during the period of martial law and after its end. The author of the legislative initiative is convinced that bringing to criminal responsibility for war crimes and crimes against humanity during the war represents a great difficulty both from a legal and a practical point of view.

Unreasonable duration of criminal procedure

The duration of the criminal procedure and the unreasonably long terms of consideration of cases in court reached a worrisome point. When deciding against Ukraine, the court in Strasbourg repeatedly recognized the excessive length of criminal proceedings as a violation of paragraph 1 of Article 6 (right to a fair trial) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. Among such violations are the abuse of law enforcement officers in actual proceedings, an unreasonably long stay in the status of a suspect or accused, a long stay in custody without a court verdict. But reasonable terms, among other things, provide that the accusation against the person in the shortest possible time either became the subject of judicial proceedings, or that the relevant criminal proceedings were closed. The ECtHR has repeatedly noted the need to ensure that accused persons do not spend too long under charges (the *Wemhoff v. Germany* case, application no. 2122/64) and the inadmissibility of excessive stay of the accused in a state of uncertainty regarding the outcome of the criminal charges against them (the *Kart* case against Turkey", application No. 8917/05). And "Lozovyi amendments" were adopted just to ensure this guarantee. In the event that the prosecution party does not adhere to the time limits set aside for conducting the pre-trial

investigation, the interference with the rights and freedoms of the citizen must be stopped, and the criminal proceedings must be closed.

The requirement to establish the validity of the criminal charge within a reasonable period of time does not allow for unreasonable delays in the pre-trial investigation. Law enforcement officers practice unjustified stopping of the investigation on trumped-up grounds and the provisions of para. 2 h. 5 Art. 219 of the CPC logically provide a safeguard against such abuses. If the investigating judge considers the suspension of the pretrial investigation to be groundless, the terms of the suspension are included in the terms of the investigation, and this often leads to the closure of criminal proceedings on the basis of Clause 10 Part 1 of Article 284 of the CCP. Now the parliament removed this fuse. Therefore, this not only contradicts the principle of reasonableness of time limits, but also opens wide opportunities for abuse by unscrupulous law enforcement officers and in practice will only lead to an increase in complaints against Ukraine in the ECtHR.

Criminalization of legal practice on the temporarily occupied territories of Ukraine

Another element of the attack on the legal profession in Ukraine is attempts to criminalize the activities of advocates who remained in the temporarily occupied territories. In the parliament, there's a bill equating legal practice in occupied territories to the crime of enemy collaboration. Let's think together in this direction: collaborationism is cooperation with the enemy power. The legal practice is a professional activity, independent from the state. It is in no way connected with politics, propaganda, or aggression. Moreover, according to the Constitution, the Bar is entrusted with the implementation of everyone's right to professional legal advice. So, it turns out that the citizens who remained on the TOT (which still count as Ukraine) are deprived of the said constitutional guarantee. Advocates who dare to comply with the Constitution are proposed to be punished as criminals.

Law enforcement violating advocates' rights

In April 2023, investigators of the State Bureau of Investigation carried out 49 (!) searches of advocates in the city of Kyiv and Kyiv region, defense attorneys in criminal proceedings. The Bar Council then called the searches illegal, assessed the actions of the law enforcement officers as identifying advocates with their clients and as pressure on the legal profession.

Another blatant case happened in June 2023, when six employees of the Security Service attacked advocates during a search. In this way, officers wanted to "convince" advocates to give up clients. UNBA appealed to the Prosecutor General's Office, which resulted in the SBI initiating criminal proceedings - Part 2 of Article 397 (Interference with the activities of a defender or legal representative committed by an official) of the Criminal Code of Ukraine.

Several cases of pressure from the military authorities were also recorded. In one of them, an advocate came on business to the building of Chernihiv Territorial Centre of Recruitment and Social Support (TCRSS) and was detained on the spot and served with a conscription summon. Criminal proceedings were initiated. In another case, in Odesa, an advocate was not allowed to visit a client detained by TCRSS. Here, the military authorities promised to make amends and conducted explanatory work.

Another illegal practice typically perpetrated by the law enforcement is recruiting advocates as confidential informants against their clients. This is expressly prohibited by law, and the only remedy available is disbarment of the informants thru disciplinary proceedings. Unfortunately, no recourse is currently feasible for officers perpetrating such violations.

Constitutionality of the core law provisions

Since the adoption of the Law "On the Bar and Practice of Law", it's compliance with the Constitution has never been called into question. At present, there are two constitutional complaints brought the following aspects of the law into scrutiny by the Constitutional Court, initiated in 2023:

- *the constitutionality of the legislative prescription, according to which the decisions of the self-government bodies of advocates enter into force from the day of their adoption, unless another term is provided by the decisions themselves.*
- *the constitutionality of the legislative prescription regarding the mandatory membership of advocates in Ukrainian National Bar Association¹.*

Youth Committee UNBA NextGen became truly global

UNBA NextGen Youth Committee was established in accordance with the decision of the Bar Council of Ukraine dated June 2, 2018 and the purpose of the Committee's activities is to ensure high-quality, progressive, effective and sustainable development of the Bar in Ukraine in terms of generational continuity, promotion of the young advocates career growth through educational activities, establishing the best modern standards of the legal profession and integrating young people into the operation of the Bar self-government.

Since January 2020, Sergiy Barbashyn has been the Chair of the UNBA Nextgen and The Youth Committee. UNBA NextGen actively operates throughout nearly every region of Ukraine, boasting regional representatives to ensure widespread impact. Young advocates spearhead numerous all-Ukrainian projects with the aim of promoting the legal profession among higher education students and fostering dialogue with seasoned advocates. An illustrative example is the "Judicial Debate Tournament," a biannual online event hosted by the Committee. The tournament serves as a platform for law students to enhance their practical skills, including crafting legal positions, drafting procedural documents, managing court cases, and honing their courtroom speaking abilities.

Developing Ukrainian projects and committee development, UNBA Nextgen does not stop international cooperation. Under Sergiy Barbashyn leadership, Committee experienced considerable growth in young advocates' international cooperation. Subsequently, Ukrainian young advocates continued to build strong connections and cooperation with bar associations from different countries and their young advocates divisions by arranging special meetings, organizing common events and working under common challenges. As an example, a unique project with the Warsaw Bar Association regarding access to the profession for young Ukrainian advocates in Poland.

In 2023, UNBA NextGen actively collaborated with the European Young Bar Association, a partnership that gained significant momentum amid Russia's full-scale invasion, with EYBA representatives steadfastly supporting Ukraine and its advocates. In March 2023, Youth Committee Chair delegates participated in the European Young Bar Association (EYBA) Spring conference in Lisbon, Portugal, presenting a report on young Ukrainian advocates' initiatives and wartime challenges.

This collaboration between EYBA and UNBA NextGen reached new heights when Sergiy Barbashyn, Chair of the Youth Committee UNBA NextGen, was elected President of the European Young Bar Association in June 2023 at the Oslo conference. His election to EYBA is the statement of trust and recognition, and we wish Sergiy a fruitful term in office.

As a manifestation of the alliance with the EYBA, on December 14, the Ukrainian National Bar Association conducted a webinar titled "Accelerator of Recognition: Empowering Young Lawyers in Rankings," jointly organized by the UNBA NextGen Youth Committee and the European Young Bar Association.

¹ In Ukrainian - <https://ccu.gov.ua/novyna/konstytuciynyy-sud-ukrayiny-pereviryt-na-konstytuciyist-zakonodavchyy-prypys-zgidno-z-yakym>