The lowdown on advocacy

On the challenges and achievements of the first year upon implementation of Legal Profession Reform we talked with the Chairman of Ukrainian National Barristers' Organization, Ms. Lidia Izovitova

August 15, 2013 marked one year from the date when most of the provisions of the Law of Ukraine "On the Bar and Advocacy" were adopted (the Law). During that time, there were a lot of public and backroom discussions, including virtual, not the less there were (and some still ongoing) litigations. However, no first persons of legal profession were involved in those discussions – namely the leadership of the Council of Advocates of Ukraine, that's why all the disputes were lacking one thing – the answers to troubling the law community questions from the first person.

On the occasion of the anniversary of the Bar, as a kind of reference point, we talked frankly about the events that took place at the Bar of Ukraine since May 2012, with the Chairman of the Council of Advocates of Ukraine - President of the National Association of Advocates of Ukraine **Lidia Izovitova.**

It should be noted that Ms. Izovitova was ready to open dialogue and shared her vision of the processes inside of the legal profession, giving a warning: "I realize that I am giving an interview to the journalist – attorney, so do not blame me if there are counter- questions, a kind of counter-interview, are you ready for it? "

— Lidia, it has been already a year time since the Law of Ukraine "On the Bar and Advocacy" came into force. In September last year, we were talking about fears in connection with its implementation. Then, the active work started, nobody had time for discussions. What was happening to the legal profession in that time, so to speak, from the inside?

— Perhaps it's proper to talk about the new Law not referring to the moment of it's coming into force, as many processes "after" were the result of some trends that had emerged earlier, even when the bill of law was prepared, accepted.

On the day of the adoption of the Law of Ukraine "On the Bar and Advocacy" I was in the Volyn region, which was attended by members of the Higher Qualification Commission of the Bar at the Cabinet of Ministers of Ukraine (HQBC at CMU). The mood was different: some perceived the adopted law as a next stage in development of the legal profession, while others have experienced disappointment that not everything succeeded. Therefore, our proposal to establish a working group for preparation of the documents on the transitional provisions of the Law was ignored. They said, too early yet, let the law take effect.

But the time was passing by and the tasks set forth were enormous! The regional advocacy self-governance bodies had to be set up only in 60 days after the Law came into force, as one task. And the lawyers personally had to deal with the implementation of the new Law, put it into practice with own efforts. Those were already huge challenges for the Bar.

— What are the challenges you have in mind?

— The tasks related to the implementation of the Law were different, and they stemmed from the Act itself. Conventionally, I propose to split them into two periods.

"Pre-congress" would be the name for the first period before the founding conference. At this stage, it was necessary to hold the constituent conferences for the lawyers of the regions, where regional self-advocacy bodies had to be set up, representatives to the national self-governance bodies to be elected, delegates to be appointed to the founding

congress of the barristers of Ukraine's sticking to the quota of one delegate per 100 lawyers who had received a certificate in the respective region (but not less than five on behalf of the region). This had to have been followed by preparation and holding Constituent Congress of Advocates of Ukraine, where a National Association of Advocates of Ukraine had to be established, leadership of the Council of Advocates of Ukraine and the Higher Qualification and Disciplinary Commission of the Bar (HQDBC) to be elected, the Supreme Auditing Committee to be formed, and legal documents to be approved, namely: the Charter of UNBO, the Memo on the Council of Advocates of Ukraine, HQDCA, of Supreme Revision Commission. In addition, it was necessary to adopt new rules of legal ethics and resolve issues on the needed payment (or absence thereof) of the annual contributions for the legal profession self-governance and determine the lines of their use.

Second Period - "post-congress" - included UNBO state registration, approval of regulations on Regional Councils of Lawyers, regional QDCA, acceptance of Acts required for all advocates of Ukraine and, above all, the provisions on the procedure of the Unified Register of Advocates of Ukraine (URAU).

It was necessary to adopt the provision on the lawyer's warrant, on the amount, timing and procedure of making an annual contribution to self-governance of lawyers, on the procedure for inclusion in the URAU of the foreign lawyers and approve the list of documents required for this purpose; to resolve issues of training lawyers and other topics. The Law also required the adoption of papers for admission to the legal profession, namely, admission to pass qualifying examinations, the procedure of taking qualifying examinations, on qualifying examinations program, approval of the procedure and the internship program, and many others.

I mentioned this bulk of work we had to do in 2012, for a reason. That's the way the lawyers are: they first think about the interests, challenges and troubles of their clients, and at last about themselves and their own problems. So it won't be surprising if not all of them so far have read the new Law. And moreover, not all have the ability to analyze events related to its implementation. Therefore, I'm covering the events in the way I see them, how my colleagues see them, analyzing the more recent events.

— If the task was clear, what was the complexity in the preparation for the Constituent Congress?

— Each stage had its own challenges. For example, if creation of the working group for the preparation of projects was rejected on the HQBC conference held on July 6, 2012 in Lutsk, which I have already mentioned, in the next HQBC conference in Sevastopol, held on August 10, a draft by an unknown author of some Regulations on the founding conferences of lawyers and the Founding Congress of Advocates of Ukraine was proposed for approval.

It was the first apple of discord thrown to the lawyers.

The Regulations, as you know, were adopted by a majority vote of the HQBC members, but the discussion that began at HQBC meeting against some of its provisions, has developed into litigation and ended up in its reversal by the court. The same fate befell to the identical (before comma) Regulations accepted in violation of the court's decision.

— Who and why needed this very Regulations?

— The question above for me personally breaks down into a number of questions "Why?" (What's the reason?) so well known from the childhood and "Why?" (For what?) distinguished for maturity, which I would also like to ask out loud ...

So, an urgent debate arose among the members of HQBC about the apparent inconsistency of certain provisions of the proposed Regulations to the adopted Law, even in the title. Both the other members HQBC and I had questions related to its adoption:

— Why is it HQBC to approve Regulations on the founding conferences of lawyers in the region, if these issues are attributed by the Law to the competence of the QDCA? In fact, it was all about the abolition by the decision of

HQBC of the QDCA competence for organizational and technical support of the founding conferences of lawyers in regions to which they were endowed by the Transitional provisions of the new Law.

— Why is the founding conference (meeting of representatives) of lawyers in fact substituted by the general meetings of lawyers which is the organizational form of the old law?

— Why, in violation to the requirements of the Law on the right to participate in the founding conferences for only those lawyers who received certificates at QDCA in the given region, did the Regulations allow participation in it for those who entered in the Register of lawyers in the region hosting the conference, though lawyers received their certificates at QDCA in other regions?

— Why did the chairmen of QDCA for the last few months before the founding congress of lawyers complain that HQBC did not accept information about the new lawyers for inclusion in the Register of Advocates of Ukraine, which was then maintained by HQBC? At this, all have long known that passing the examination and issuance of certificates of lawyer on the eve of the founding congress gained unprecedented momentum: everybody was in a hurry to get the status of a lawyer under the old rules, without training, and sometimes en masse and not at their place of residence. At the same time HQBC obliged the regional QDCA to complete the admission of qualifying examinations for those who had filed before the date of the founding conference of the region, but the amended lists of lawyers were accepted not in all regions.

And yet, unfortunately, the majority of the members of HQBC voted for the Regulations, knowing that it was violation of the Law. And all these "Why-s" merge into one "What for". Why did they vote for it? For what reason did they accept it and did they know about the possible objectives that could be achieved by such a vote?

All we, the lawyers, tend to analysis things. These are the questions I would ask you to answer, as a journalist and as a lawyer. In fact, you know a lot "from the inside". But still I am the one to answer the questions now since it's my interview.

— And why, or what for, in your opinion, the majority of HQBC members voted against holding conference on the quota principle?

— The existence of a hidden conflict of interest of QDCA of big and small regions was obviously manifested in the issue of organizing founding conferences of lawyers. And when you consider the prevailing number of small regions, the outcome of the vote becomes clear. If for regions with few lawyers it does not matter whether to hold a conference or a meeting - all are one and the meeting is even more convenient in the view of organization, for large regions, which are less in number, holding the meeting was almost impossible. Where do you find a premise with capacity to hold about five thousand lawyers? May be you just hope that not everyone will come? But it's easier to assemble their representatives, according to the quota established by QDCA, although it implies more labor: it's also necessary to conduct the meeting to nominate delegates to the conference.

— But even judicial repeal of the Regulations did not prevent its repeated adoption…

— How do you explain the subsequent decisions and the vote of HQBC members on September 11, 2012, only few days after the previous regulations was abolished by the court, by the way, at the suit of a lawyer for the same Regulations to the comma? This is motivated by the alleged fact that the former had been adopted before the Law entered into forth, but the validity of such motivation is questionable.

When re-enacted Regulation documents were suspended, and then declared illegal by the court, HQBC outside its jurisdiction started to overrule QDCA's decisions, which have appointed its regional conferences on the quota principle, and then the decisions themselves of the constituent conferences of lawyers, for example, those taken in Donetsk and Kharkiv regions.

Therefore, if in the first case, the members of HQBC might have been mistaken, the further vote for the illegal decisions cannot be explained as an error - those "mistakes" seem to be too much systematic. Another question

appears: Was everyone aware of the real motives of these "errors" in the regions? I'm sure they were not. Neither were the lawyers, executives and the members of QDCA, and even members of HQBC, except for the few "confided in" persons.

— For what purpose were these "mistakes" made?

— By the fight against the quota principle of constituent conferences, HQBC management gave the signal to conduct duplicating, alternative founding conferences of lawyers, at pre-arranged sites (in all cases the rooms were previously rented by certain persons, invitations were sent out to all lawyers, not just delegates) with the participation of the HQBC members from other regions. And in some cases, even with the participation of the chairman of the commission. And, of course, without the consent of the HQBC itself.

— What were alternative conferences needed for?

— What for? There are several versions, and several scenarios are discussed at the time. First scenario: two conferences mean two sets of delegates. You can select and focus on more "loyal" ones, and you just do not recognize the others authorized by the Credentials Committee. Never mind, that the Credentials Committee of the constituent congress was not provided for by the Law, and the status of a delegate is defined in advance by the said Law in the same procedure. Second scenario: it was possible to recognize the authorized delegates of both conferences and thus change under the pious pretense the statutory quota on delegation to the founding congress for one delegate on behalf of the 50 lawyers, instead of one on behalf of the 100, and then to recognize all the decisions of the Congress void. Any of the options was good, depending on the goals pursued by heir authors.

To a certain extent, "confided in" persons have implemented their scenario, but in the "Kinopanorama", by canceling decisions taken by the constituent conferences in Donetsk and Kiev, Kharkov and Transcarpathian regions, in such a way they "put an end" to the delegates from these areas and allowing chosen persons at alternate conferences.

— Let's go back a little to the founding conferences. You said that HQBC laid the opportunity to participate in the founding conferences, not only for those who were granted a certificate in the region. Why did they need such a point?

— For what purpose the permission to vote at the founding conferences was given not only the lawyers who had received their attorney certificates at QDCA of the particular region, but also to others, who were not included into the public register of lawyers in the region, but were licensed by QDCA in other regions?

There were rumors in the attorney's community about the ongoing "merry-go-round voting in the barristers' manner". The basis was the use of conflict of interest of small and large regions regarding the quota principle of holding conferences as a driving force to find ways to increase the number of delegates from small regions. Large regions, where the lawyers successfully won court cases for the quota principle, moved into the category of "unfriendly" ones.

Experts of different types and levels of election campaigns argued that in many regions the part of lawyers was "detached" the next day after the founding conferences, and on the eve of the conferences the lawyers of the other region were "included" to its roster, as if it was their place of residence or place of business. Thus, the number of delegates to the founding congress on behalf of the lawyers from the region was artificially increasing. If the roster of advocates was indeed maintained only by QDCA on the eve of the congress, and their relevant data was not reflected in the HQBC roster, this explains why the number of delegates to the founding congress from some regions is not consistent with the number of lawyers listed in the national registry.

At that moment, many did the relevant calculations, asking uncomfortable questions to the chairmen of QDCA. For example, once I received such a response: "I have all the documents and I am not guilty, that HQBC does not include them into the roster." Some of QDCA chairmen, usually in areas where the increase in the number of lawyers did not coincide with the "higher" interest, yet ensured this data was entered, but with the scandal and not from the first attempt.

Of course, with a quota principle of holding the conference the similar "merry-go-round voting in barristers' manner" was impossible. After all, QDCA was to report the number of lawyers who have received their certificates in the region at the time of setting the representation quota at the conference. And, therefore, it was impossible to "add" new comers to the roster.

— Perhaps this question is irrelevant, but it seems obvious that, even taking into account the varieties of opinions in regard to matter of the founding conferences, many questions could have been cleared before the constituent assembly, and there is, so to speak, and then give the final battle?

— It is likely that HQBC was planning it, but not by addressing the issues in advance, and on the basis of their authority. Let me remind you, HQBC has the right at its disposal to organize and hold its founding congress. It was HQBC address where Minutes of the founding conferences of the lawyers from the regions were submitted to. It was HQBC in accordance with their competence that defined the venue of the constituent congress 20 days beforehand, and placed this ad in the newspaper "Governmental Courier" and on its own website twice, as well as sent out invitations to the delegates. Each delegate received a personal invitation from the chairman of HQBC to be present on November 17, 2012 at 11.00 in the conference hall of hotel complex "Russia" in 4, Hospital street in Kiev city.

It is surprising that such personal invitations were received not only by the delegates of the founding congress, but also by those persons against whom HQBC repeatedly made decisions "not to be invited to the Congress" (some lawyers who were not elected by the delegates of the constituent congress, petitioned to be allowed to the Congress as guests, so that they could present their ideas and suggestions, but HQBC took the decision to dismiss such petitions in its meetings on September 11, 2012 and November 16, 2012, with the exception of attorney **Michael Isakov** – editor's note). Who took over such a responsibility? Who signed these invitations contrary to the decisions of HQBC?

— What did HQBC present at the congress?

— The last meeting of HQBC was held on November 16, 2012, followed by the Congress on the next day. The meeting was extremely significant.

The question of the amount of the annual contribution to the self-governance of lawyers was brought up, which was then put to a vote at the Congress. The proposal on the amount of two minimum wages was supported.

The possibility of the creation of the Credentials Committee was under consideration, they said, "we have night ahead to print mandates." Objections of the HQBC members referring to the prohibiting court ruling on the Credentials Committee on provisional remedy was not supported by majority.

The meeting also raised the question why the information about the delegates elected by alternative conferences was published in "HQBC Bulletin" since HQBC had made a decision at the previous meeting not to allow their participation in the congress. The response to it was: Congress will decide whom to admit because it is the supreme body of lawyers' self-government, and court’s decrees do not matter to us.

The closing information was concerning the registration of delegates which was to be carried out by the students of a university (which for ethical reasons I will not name), which caused confusion and protest of some HQBC members. And in the end it was announced that the HQBC entered into an agreement with a certain security firm "with no weapons", that will be enforcing order during the Congress.

— As I recall, all of these items were not met.

— On November 17, 2012 the founding congress of lawyers was held.

There were delegates, not college students at registration. They were registering only the delegates elected by the constituent conferences held by QDCA. The delegates from alternative conferences and from the Dnepropetrovsk

region (please, be reminded, the results of the conference had been abolished by the court on the eve) were missing in the lists. Noticing this, the employees of the HQBC Secretariat start campaigning, "Do not register."

Some of the delegates and the team get instructions to close in their hotel rooms and not come out until further notice. When they asked for breakfast, they are allowed to go down to the restaurant, and discovered registration desk upon its exit. Heads of delegations refused to respond to the questions why registration of delegates was held elsewhere, why registration was not open near the conference room, where there a common registration was, why they would not go into the hall specified in the invitation, and where to they were called via loud-hailer? Neither there was any answer to the question why they were led somewhere else to conduct the congress.

They were unaware that the absence of delegates from alternative conferences and Dnepropetrovsk region at the congress was not letting to achieve certain goals to those who had hoped for these voices, there was little chance to "stretch" the Credentials Committee, and therefore get rid of the delegates - lawyers Donetsk, Transcarpathian, Kiev, Kharkov regions, elected at conferences on the quota principle, and thus to reformat the vote.

Therefore, the subsequent post-congress shouts on a secession in the legal profession are exaggerated to a big extend. There is always a ground for secession, and you can't name it here as there was no basis!

— Does it mean that what we were able to observe in the form of alternative conferences and congress was not secession, although the event participants split approximately equally?

— Conflict of interests of large and small areas concerning the way of conducting the founding conference does not imply secession in the legal profession. And these are occasional events. The law specified that all subsequent regional conferences of the lawyers must be held exclusively on the quota principle, and the latter is based on the number of lawyers in the Unified Register of Advocates of Ukraine in accordance with the location of the workplace on the day of setting the quota.

Attempts to create a nationwide alternative of regional self-governance advocates in Transcarpathian and Kharkiv regions and two supreme advocacy self –governance bodies are on their own heads of those who had manipulated the promotion of the constituent assembly. The attempts to destabilize the higher bodies of self-governance of lawyers namely the Council of Advocates of Ukraine and the Higher Qualification and Disciplinary Commission of the Bar when members of these bodies from regions received not merely requests, but also the threats in regards to the participation in the meetings.

In the beginning of the interview I on purpose listed an array of memos, the need for which was dictated by the Law for all lawyers of the country without exception. We were desperately running late with this. And the situation with the quorum for the adoption of these decisions was unfavorable. The lawyers intervened themselves and demanded disciplinary punishment of those who ignored the trust to those lawyers who had elected them to higher authorities of advocacy self-governance. Now we do not have the problems which we were facing in the beginning. We are actively working on it. And everyone knows that being a member of the supreme body of self-governance of lawyers is honorable mission and duty and responsibility, and the daily work, if you have been trusted it.

— By the way, in regards to the legislative control. The complaints about the Law were numerous, including quite reasonable ones. How do you manage to work on it today?

— Is the new Law perfect? It is not. It leaves much to be done. But the questions of non-interference into the autonomous advocacy as advocacy warranty issues have been resolved. You know that the perfect forms are dead, so we hope for further development of these provisions of the Law.

In the framework of the authority of self-governance of lawyers, we try to find answers to those questions that are not resolved by the Law. And in many cases, our competence is enough. Not every issue needs to be settled at the level of the Law although some provisions do require adjustment.

During this short period, we have developed and adopted 200 resolutions on matters in our jurisdiction as defined by the Law: the formation of URAU, admissions to take qualification exams, internships, entry in the register of data on lawyers-expatriates, trainings for lawyers and many others.

— Why so much attention has been paid to and is still focused at URAU? Many believe that this is an attempt to "drive" lawyers in a kind of "a stall".

— In my opinion, such statements do not stand up to criticism, at least because, if we created a unified independent from the state professional association, that unites all of appearing Advocates of Ukraine, it is quite logical to mainatin URAU to be able to find out who belongs to NAAU.

In addition, the new Law on legal profession directly links the lawyer's status with the data from URAU.
Some mistakenly believe that URAU must become effective only from January, 16, 2014. It has become a typical misconception. URAU began its work five months after the Law came into force as required by the Law. And the official statements to confirm the status of the defense in criminal proceedings must be obligatory provided a year after URAU started its activity, i.e. January 16, 2014. Although the absence of valid data in the URAU does not create any obstacles to his/her participation in self-governance of lawyers, such evidence today affects his/her participation in legal profession self-governance, to participation in conferences, etc.

— Perhaps the most powerful discussion in barristers' circles was caused by the decision of the Council of Advocates in regards to the internship. In particular, its serviceability for the trainee.

— The law foresees a six months period for trainees to determine the readiness of individuals to autonomous advocacy. The question arose whether for free or for money. Organization of trainings was laid by the Law upon regional councils of lawyers who operate thanks to the contributions of lawyers. The management of internship was laid upon the lawyers with experience of advocacy for at least five years. Training is conducted as a part-time intern. Does this mean that in their spare time, and spare time of an internship supervisor? Given the standard working hours in Ukraine it is so. The approved Regulations on the internship foresee 550 hours. Does it mean that this a supervisor must actually work these internship hours for free outside of his/her standard time? Or could this time be compensated from the attorneys' fees (including those of the supervisor)? It does not seem fair in respect to the lawyers themselves.

Therefore, the Council of Advocates of Ukraine made a decision that the trainees have to pay contributions for an internship which will be partially used to cover their training and wages of an internship supervisor. Does it mean that we are hindering the path to the profession? Of course not! There is another way to test the readiness of individuals to the lawyer's profession for granting a certificate without any training - work as a paralegal assistant. In this case, the assistant's work is rewarded at the expense of the lawyer.

— What are the challenges still faced by the authorities of self-governance of lawyers today?

— I cannot help mentioning the problem of attorney's certificates which should be licensed for free, though, as we know, nothing is done for free in the material word. Consequently, the certificates will be made at the expense of the fees paid by lawyers for advocacy self –governance as there are no other sources.

All the preparatory work has been completed, samples of certificates approved. Given the complexity of the technical component in their manufacture, namely offset printing, holographic protection, the possibility of introducing biometrics of a lawyer, because we understand that we are talking about a special certificate - the Council of Advocates of Ukraine allowed the lawyers to operate upon the old format certificates until September 1 of the current year.

Two months ago, the chairmen of the regional governments in their turn, obtained the appropriate documentation for the file data collection (including digital images) needed for the production of certificates for each lawyer. Neither the lawyers nor the leaders of the Council of Advocates in the regions demonstrate dynamism in this issue. We have

only about 50 files, which means that there is data for certificates only in regards to 50 barristers of the country. We are expecting proactive attitude from the lawyers in this regard.

There are other, more or less technical issues that remain unsolved. But regardless of new challenges we hope to establish a stable self-governed institute of legal profession in the near future, to protect advocacy, and every lawyer.

(Interviewed by Irina Gonchar, "Legal Practice")