**October 6th, 2022**

**To CCBE PECO Committee**

**REPORT**

**ON THE CURRENT SITUATION REGARDING LAWYERS AND**

**SPECIFIC ASPECTS WITHIN THE JUSTICE AREA IN UKRAINE**

**REGARDING THE CHANGE OF THE CCBE MEMBERSHIP FOR**

**THE UKRAINIAN NATIONAL BAR ASSOCIATION (UNBA)**

**With the launch of Russian aggression against Ukraine, the issues facing Ukrainian Bar became more varied and complicated. Below you may find a summary of the most pressing issues as of today.**

**Issues caused by Russian invasion of Ukraine**

**Since February 24th, 2022, the entire nation of Ukraine has faced a new reality – rocket and artillery strikes, martial law, and attempts to besiege the capital city. Despite the hardships of war and martial law, Ukrainian advocates continue their constitutional mission of defending from criminal charges and protecting legitimate rights and interests. The Bar Council of Ukraine (BCU) secured the archives and records of the Bar and limited access to the Unified Register of Advocates of Ukraine to prevent any kind of abuse of personal data. Second, the Bar Council established the Single Information Center for advocates to consolidate information about violations of advocate’s rights and provide accurate information on security risks. BCU also relaxed some professional regulations to ensure the operation of the profession in times of martial law.**

**The Bar Council established the Board of Trustees vested with responsibility for distributing the international charity donations to the advocates and their families that died, sustained injuries, lost their accommodation, depend on medications, and to senior advocates.**

**Prosecutor General lists ‘disloyal’ advocates**

**At the meeting on September 5, the Bar Council of Ukraine heard and discussed information from Members of Bar self-government, Chair of UNBA Committee for the Protection of Advocates’ Rights Volodymyr Klochkov, and decided to petition the Prosecutor General with a request to provide information on the formation of lists of "disloyal advocates" by regional Prosecutors' Offices, apparently in compliance with the instructions of the Office of the Prosecutor General.**

**Since this is a gross violation of the guarantees of legal practice, exercised by the independent, self-regulated legal profession, established by the Law of Ukraine "On the Bar and Practice of Law", the BCU requested the Prosecutor General to provide information on the existence of such instruction or deny issuance of such internal order, if it is not true.**

**National Council for the Recovery of Ukraine designated UNBA as a threat to justice reform.**

**On the website of the Ukraine Recovery Conference, held in Lugano, Switzerland, on July 4-5, the Draft Ukraine Recovery Plan of the National Council for the Restoration of Ukraine from the Consequences of the War was published. Materials of the working group "Justice" laid out in 24 pages of text (pages 106-130 out of 161) titled "Improvement the Bar. Transformation of the Notary System".**

**The working group, which presented future amendments to the legislation on the Bar, falsely claims that UNBA and all regional Bar bodies are a ‘threat’ and may resist the said legislative changes. Such a position of the authorities can be assessed as a form of pressure on an independent institution of the Bar, undermining the authority of the Bar and limiting its statutory powers and status, being yet another attempt to institutionally destroy the Bar in Ukraine. The proposals of the Justice Working Group on changes to the legislation on the Bar were developed secretly, without consultation with the UNBA or regional Bar self-government of Ukraine. No proposals to consult the Bar reform plan were sent to the Bar self-government bodies.**

**This goes against European standards, in particular, the PACE resolution, which stipulates that all issues regarding the practice of law and the Bar must be the subject of prior consultation with the professional organization of advocates.**

**MoJ is reluctant to curb creation of UNBA namesake organizations**

**On August 17, 2022, the presentation of the public organization "National Association of Military Advocates" took place. As it became known, the new public organization used the full name (in Ukrainian) of the single professional organization of advocates – the Ukrainian National Bar Association, the latter created based on the Law "On the Bar and Practice of Law", which contradicts the requirements of the law. Also, the said law does not divide advocates into categories, like ‘military’ or ‘non-military’, as the name of the said organization suggested. Moreover, the Law on the Bar establishes the incompatibility of practicing law and serving in the military.**

**Previously, the Ministry of Justice was obligated by the decisions of the District Administrative Court of Kyiv dated 15.04.2016 and the Kyiv Administrative Court of Appeal, the Higher Administrative Court, to establish a legislative ban on the use of full, abbreviated, and English-language proper names of the self-governing bodies of advocates defined by the Law of Ukraine "On the Bar and Practice of Law", and names derived therefrom in the naming of other legal entity(s), its separate division(s) or public association(s) without the status of a legal entity. Despite that, the Ministry of Justice failed to comply with the said court decisions.**

**Unsanctioned searches of law firms, and advocates continue in times of martial law**

**In January-March 2022, the most violations of advocates' rights were recorded in the Kyiv region.**

**According to the statistics provided by the regional Bar councils, the Bar Council of Kyiv region received 7 reports of searches and detention of advocates. In Kharkiv, the Bar council received 5 such messages, and in Odesa - 4.**

**At the same time, the Bar Council of Kyiv region made 14 visits to procedural actions carried out against lawyers in the region because in 7 cases, the law enforcement officers failed to send advance notices about the searches and detention of advocates, which is contrary to the requirements of the law "On the Bar and Practice of Law ". During the first quarter of the year in Ukraine, according to statistics, there was only one similar case of an unauthorized search of advocates outside the capital - in the Dnipropetrovsk region.**

**In the first three months of the year 2022, advocates sent 14 complaints about violations of their professional rights and guarantees. The Bar Council of Kyiv region received the majority of them. Similarly, during this time, the Bar Council of Ukraine received 14 appeals from advocates regarding the protection of their rights. BCU sent 8 notices on this matter to law enforcement agencies. All appeals are being processed by the UNBA Committee for the Protection of Advocates' Rights.**

**As per law "On the Bar and Practice of Law", during the search or inspection of the advocate's home, other possessions, legal practice premises, obtaining temporary access to the advocate’s belongings and documents, a representative of the regional Bar Council must be present, subject to certain exceptions. In order to ensure his participation, an official conducting relevant investigative action or measure ensuring criminal proceedings shall notify the regional Bar Council at the place of such procedural action in advance. Bodies of state power, bodies of local self-government, their officials and officers in relations with advocates are obliged to comply with the requirements of the Constitution of Ukraine and the laws of Ukraine, the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and Protocols thereto, the practice of the European Court of Human Rights.**

**UNBA remains the only European Bar with legally limited means of financing itself**

**As per CCBE 2019 Survey on Fees, Ukraine remains the only Bar organization in Europe whose membership fees are directly regulated by the law and tied to certain social security payments, and thus raised each year, accordingly, given the state budget indicators approved for the current fiscal year.**

**These amendments were buried in the new edition of Transitional Provisions of the Tax Code of Ukraine and adopted in December 2016, without consulting the Bar as such, without any justified reason. It is a clear, deliberate encroachment of the State against the independent Bar, which is aimed at restricting its independence and undermines the principle of the rule of law in Ukraine.**

**Principle of continuity in force during martial law**

**During martial law, the five-year powers of representatives of regional and central bodies of advocate’s self-government end. For most of them, this is a second five-year term, after which they can no longer be re-elected. Regional Conferences and the Congress of Advocates are held according to a lengthy procedure with the election of delegates vested with the right to adopt decisions thru voting. The place and time of Reporting and Election Conferences and Congress of Advocates are to be published in advance in the media. At present, such events are not safe to organize, given the limitations of the martial law. There is a risk that Ukraine's legal profession could become decapitated during the war.**

**In order to avoid such a possibility, the Bar Council of Ukraine decided to apply the principle of continuity, according to which the Bar self-government acts on the basis of the Constitution and laws of Ukraine, and continues to function regardless of political, organizational, or any other circumstances, unless the Constitution itself and relevant legislation provide otherwise.**

**Currently, the Parliament is considering a draft law “On self-governing organizations,” which proposes to remove term limits for the elected officers of Bar self-government. Members of the Parliament believe that any restrictions on the Bar self-government and election thereto should be established by the independent Bar itself and not by the State.**

**Justice System in Ukraine**

**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 a 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.**