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**Partnership for Good Governance (2019-2022)**

**Regional Project**  
**Strengthening the profession of lawyer in line with European standards**

**CROSS-COUNTRY REVIEW OF  
THE INTERNAL STRUCTURE OF THE BAR ASSOCIATIONS  
IN ARMENIA, BELARUS, GEORGIA, THE REPUBLIC OF MOLDOVA AND UKRAINE**

**February-August 2021**

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## INTRODUCTION

The comparative review is undertaken in the framework of the regional project “Strengthening the legal profession in line with European standards” (further – Project), which is funded by the European Union and the Council of Europe and implemented by the Council of Europe. The Project is being implemented under the “European Union/Council of Europe Partnership for Good Governance”. The participating countries of the Project include Armenia, Belarus, Georgia, Republic of Moldova, and Ukraine.

In June 2020 the Council of Europe requested Mr Jędrzej Klatka<sup>1</sup> to provide a review of the internal structure of the bar association in Georgia, Republic of Moldova and Ukraine and Mr Rytis Jokubauskas<sup>2</sup> to provide a review of the internal structure of the bar association in Armenia and Belarus, as well as an overall editing of the comparative review (hereinafter called Experts). The comparative review was additionally edited by the Council of Europe.

The analysis was done by desk research based on the translated versions of the legislation on the bar, statutes of the bar, codes of conduct and other legislation regulating the activity of the bar associations and advocates in Armenia, Belarus, Georgia, the Republic of Moldova and Ukraine. Experts also had online meetings with the representatives of the main stakeholders – the bar associations, Ministries of Justice, courts and other relevant organisations of Armenia, Georgia, the Republic of Moldova, and Ukraine.

In Belarus, due to - and as of the events which ensued after the presidential elections in August 2020, the technical co-operation with the authorities has been suspended in agreement with the European Union (European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations - DG NEAR) and all project activities related to the public authorities in this country have been fully put on hold. However online expert meetings were held with non-public institutions and with representatives of the civil society.

This review consists of an introduction, description of the applicable standards and country-specific analysis, which focuses on national legal frameworks, description, and evaluation of the organisational structure of the bar association, their interactions with other lawyer professions in the justice system for each of the five countries and compliance of these parameters to the European standards. Each country-specific analysis ends with conclusions and recommendations. The review is concluded by the comparative section and overall recommendations.

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## **LIST OF ABBREVIATIONS**

AYLA: Armenian Young Lawyers Association

CCBE: Council of Bars and Law Societies of Europe

CCBE Code of Conduct: Council of Bars and Law Societies of Europe, Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers (2019)

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

GEL: Georgian lari (currency of Georgia)

IBA: International Bar Association

UAH: Ukrainian hryvnia (currency of Ukraine)

UNBA: Ukrainian National Bar Associations

## APPLICABLE STANDARDS

Proper and consistent legal regulation of the profession of lawyer is one of the pillars of the justice system. Legal professionals and their associations must be regulated taking human rights and access to justice into consideration. The most basic rights and freedoms are provided in the Convention for Protection of Human Rights and Fundamental Freedoms (Rome, 1950) such as the right to a fair trial (Article 6 of the Convention), freedom of assembly and association (Article 11) and prohibition of discrimination (Article 14).

The Council of Europe leads the international regulation and implementation of human rights, democracy, and rule of law. One of many crucial topics, on which the Council of Europe adopts legal regulation, recommendations and other legal acts is the legal profession. These documents include:

- Recommendation Rec (2000)21 of the Committee of Ministers of the Council of Europe to the member States on the Freedom of exercise of the profession of lawyer;
- Recommendation 2085 (2016) of the Parliamentary Assembly of the Council of Europe on the Strengthening the protection and role of human rights defenders in Council of Europe member States;
- Resolution 2095 (2016) of the Parliamentary Assembly of the Council of Europe on the Strengthening the protection and role of human rights defenders in Council of Europe member States;
- Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies);
- Recommendation 2121 (2018) Parliamentary Assembly of the Council of Europe on the case for drafting a European convention on the profession of lawyer;
- Reply to Recommendation (Recommendation 2085 (2016)) of the Parliamentary Assembly of the Council of Europe on the Strengthening the protection and role of human rights defenders in Council of Europe member States;
- Doc. 14285 (2017) of the Committee of the Ministers of the Council of Europe on the strengthening the protection and role of human rights defenders in Council of Europe member States;
- European Parliament resolution (2006)0108 on the legal professions and the general interest in the functioning of legal systems.

Apart from international treaty law concerning the regulation of the legal profession, sources of soft-law and advisory/guiding opinion level documents also provide standards recommended following in regulating the profession and its self-governance. Such legal documents as:

- European Parliament resolution on the legal professions and the general interest in the functioning of legal systems (2006)0108;
- Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990;
- Charter of Core Principles of the European Legal Profession (adopted the Council of Bars and Law Societies of Europe in 2006);
- Code of Conduct for European Lawyers (adopted by the Council of Bars and Law Societies of Europe in 1988);

- Turin principles of professional conduct for the legal profession of the 21st century (adopted by the International Association of Lawyers in 2002);
- IBA International Principles on Conduct for the Legal Profession (approved on 25 May 2019 by the Council of the International Bar Association).

The best practice of European bar associations is also a source of standards when regulations in international documents are absent.

The most important principle is the principle of independence. Bar associations must be independent and have freedom from the government institutions, public or other associations. The independence of bar associations is crucial to the independence of lawyers and their legal practice.

The Council of Europe standards indicate that independence of the legal profession depends on the democratic nature of the self-governing of bar associations. Governing bodies of the bar association must be elected properly, there should not be unreasonable requirements and restrictions for lawyers to participate in the election and be elected. External institutions should not have the power to adopt the pivotal decisions on the bar associations' internal structure. External institutions can have a function to advise or recommend, but not to decide.

Bar associations should be able to function independently and democratically on their own. All of the members of governing or disciplinary bodies should be elected by the members of the bar association directly or through their democratically elected representatives.

The bar associations should have significant decisive power in matters of the legal profession.

Below are some most important quotations from international and European documents about lawyers' profession:

- Recommendation Rec(2000)21 of the Committee of Ministers to the member States on the Freedom of exercise of the profession of lawyer:

*Principle V - Associations*

1. *Lawyers should be allowed and encouraged to form and join professional local, national and international associations which, either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.*

2. *Bar associations or other professional lawyers; associations should be self-governing bodies, independent of the authorities and the public.*

- Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress:

*Professional associations of lawyers*

24. *Lawyers shall be entitled to form and join self-governing professional associations to represent their interests promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.*

25. *Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and ethics.*

- Charter of Core Principles of the European Legal Profession:

*Principle (a)*

– the independence of the lawyer, and the freedom of the lawyer to pursue the client's case: A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed, without this independence from the client there can be no guarantee of the quality of the lawyer's work. The lawyer's membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers' independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients' cases, and may suffer imprisonment or death for attempting to do so.

- Turin principles of professional conduct for the legal profession of the 21st century:

*Role of and representation by the Bar*

*Depending on the country, a Lawyer has the duty or the right to be a member of a Bar or Law Society and to ensure that the profession is governed by rules laid down by the representative bodies of which he or she is a member, and that they are observed.*

*Provided that the Bar observes the principles set out in the Basic Principles on the Role of Lawyers endorsed by the UN, Lawyers have the duty to recognise the Bar's right to establish such rules and to ensure compliance by conforming their conduct to the rules laid down by their own Bar and those of the other jurisdictions in which they practice.*

*The representatives of the legal profession must be able to contribute to the development of legislation, case law and jurisprudence.*

Moreover, the following judgements of the European Court of Human Rights should be taken into consideration:

1. case *ANDRÉ AND ANOTHER v. FRANCE* 24 July 2008 Application no. 18603/03;
2. case *CAMPBELL AND FELL v. THE UNITED KINGDOM* 28 June 1984 Application no. 7819/77;
3. case *GOLOVAN v. UKRAINE* 5 July 2012 Application no. 41716/06;
4. case *ILIYA STEFANOV v. BULGARIA* 22 May 2008 Application no. 65755/01;
5. case *KHODORKOVSKIY v. RUSSIA* 31 May 2011 Application no. 5829/04;
6. case *KRUGLOV AND OTHERS v. RUSSIA* 4 February 2020 Applications nos. 11264/04;
7. case *MANCEVSCHI v. THE REPUBLIC OF MOLDOVA* 7 October 2008 Application no. 33066/04;
8. case *MORICE v. FRANCE* 23 April 2015 Application no. 29369/10;
9. case *MOULIN v. FRANCE* 23 November 2010 Application no 37104/06;
10. case *NALBANDYAN v. ARMENIA* 31 March 2015 Applications nos. 9935/06 and 23339/06;
11. case *WIESER AND BICOS BETEILIGUNGEN GmbH v. AUSTRIA* 16 October 2007 Application no. 74336/01.



The judgements listed above focus on the independence of the Bars and protections of professional secrecy.

As far as independence is concerned, ECtHR has noted that in determining whether a body can be considered "independent" - the Court has had regard to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.<sup>3</sup>

The question of freedom of expression is also related to the independence of the legal profession.<sup>4</sup>

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<sup>3</sup> The case of CAMPBELL AND FELL v. THE UNITED KINGDOM 28 June 1984 Application no. 7819/77

<sup>4</sup> The case of MORICE v. FRANCE 23 April 2015 Application no. 29369/10

# **I. ARMENIA**

## **I.1. National legal framework**

In the context of the bar associations in Armenia, Article 64 of the Constitution of Armenia guarantees the right to receive legal aid. Paragraph 2 of Article 64 establishes independence, self-governance, and legal equality of advocates

The Law on the Profession of Advocate (also referred to as the Law on Advocacy) establishes the basics of practising the profession of advocate and of forming a professional association of advocates. Chapter 2 of the Law on the Profession of Advocate focuses on the arrangements for the profession of advocate. It describes the Chamber of Advocates of Armenia (hereinafter, the Chamber of Advocates), the bodies of the Chamber of Advocates and the rights and obligations of these self-governance bodies.

The Code of Conduct of Advocates prescribes the principles of advocate ethics and the rules of conduct of advocates, which are based on the moral standards and traditions of the advocacy, as well as the international standards and rules of advocate activities.

The Charter of the Chamber of Advocates (hereinafter, the Charter) establishes operating principles, goals, detailed internal organisational structure of the Chamber of Advocates.

Regulation on Disciplinary Proceedings defines the order of activities of the persons preparing the cases of the Chamber of Advocates' disciplinary proceedings, the procedure for initiating and carrying out disciplinary actions, and the rights and responsibilities of the participants.

## **I.2. Organisational structure of the bar association**

### **I.2.1. The Chamber of Advocates**

The Chamber of Advocates is a professional, independent, self-governed organisation with legal personality. The Chamber of Advocates enables the exercise of professional practice by its members, protects the rights and lawful interests of its members, educates, and trains its members, supervises the observance by its members of the requirements of the principles of advocate ethics and the rules of conduct of advocates, takes measures to strengthen the standing of the profession of advocate and ensures the provision of equally accessible and efficient legal aid for everyone.

The duties of the Chamber of Advocates comply with European standards.

The Chamber of Advocates has these bodies: the General Meeting of Advocates (hereinafter, the General Meeting), the Board of the Chamber of Advocates (hereinafter, the Board), the Qualification Commission of the Chamber of Advocates (hereinafter, the Qualification Commission) and the Chairperson. The School of Advocacy and Public Defender's Office are also operating closely with the Chamber of Advocates.

Article 8 of the Law on the Profession of Advocate states, that members of the bodies of the Chamber of Advocates shall work in those bodies without remuneration except for the Chairperson of the Chamber of Advocates (hereinafter, the Chairperson) as well as in cases prescribed by the Charter of the Chamber of Advocates. Although many European bar associations do not remunerate advocates for participation in the work of self-governing bodies, remuneration issue is not a subject for legislator and should be left for the bar association to decide. According to the Principle 5 of the Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (hereinafter, the Recommendation on the freedom of exercise of the profession of the lawyer) bar associations should be self-governing and independent of the authorities and public. Therefore, the provision regarding the remuneration of advocates working in self-

governing bodies does not comply with European best practices, because it violates the principle of independence of the bar associations.

## **I.2.2. The General meeting of the Chamber of Advocates**

Article 9 of the Law on the Profession of Advocate stipulates that the General meeting is the supreme body of the Chamber of Advocates. Article 7.1 of the Charter of the Chamber of Advocates states that the General Assembly of the Chamber of Advocates is the supreme authority of the Chamber of Advocates. Among its other responsibilities the General meeting adopts the Charter of the Chamber of Advocates and the Code of Advocate's Conduct, elects and recalls members of the Board and the Chairperson, elects the advocates for the purpose of preparing the Disciplinary Case for Examination (Article 39.5).

The Chairperson convenes the General meeting at least once every two years.

Members of the Chamber of Advocates have the right to vote at the General meeting. Advocates receive notifications about the agenda of the General meeting, the commencement date, the time (in case of distant voting – the duration), as well as the venue (location), on their e-mail addresses mentioned in the list of advocates, not later than 30 days before the meeting, if elections are included in the agenda; or 14 days before the meeting on other issues.

A specific description of the voting procedure is provided in the Charter of the Chamber of Advocates. The procedure includes the place and duration of voting, the characteristics of the ballot papers, the procedure for receiving and submitting the ballot papers. The voting procedure is monitored by the Counting Commission and other authorised observers. Article 14.23 of the Charter states, that voters participate in voting in person, voting by authorised persons is prohibited.

The General Meeting has a quorum if more than one-third of the members (advocates) of the Chamber of Advocates having a right to vote are present at the meeting or if more than one-third of the members of the Chamber of Advocates take part in the distance meeting. The quorum is verified by the registration of the members. The Law on the Profession of Advocate states that if the General meeting lasts more than one day, the registration of advocates, for checking the quorum, is carried out on each of those days. The necessity of such repeated registration is questionable. The General meeting can take place remotely or the voting itself can last for a few days, therefore such repeated checking of the quorum adds an additional burden on the organises. Most importantly, the Chamber of Advocates is an independent organisation and therefore the procedure of checking the quorum should be decided by the Chamber of Advocates and not the legislator.

Decisions of the General Meeting of the Chamber of Advocates are made by a simple majority of votes of participating members, in an open ballot, except for cases provided by the Law on Advocacy and the Charter. The results of the voting are to be published by the Chairperson of the Counting Commission or another member of the commission, by the decision of the commission.

Therefore, in general provisions of the Law on the Profession of Advocate, considering the General meeting, comply with the European standards.

## **I.2.3. The Board of the Chamber of Advocates**

The Board is the executive body of the Chamber of Advocates (Article 10). The members of the Board, except the Chairperson, are elected by the General Meeting. The Board consists of no less than 12 members, apart from the Chairperson. The competencies of the Board include forming of the Qualification Commission, appointing the Head of Public Defender's Office, defining the internal regulations for the regular activity of the School of Advocates, deciding on issuing an authorisation to practise the profession of advocate to a person claiming

it, deciding on repealing the authorisation of an advocate, deciding on suspending or reinstating the authorisation of an advocate and other functions, stated in the Article 10 of the Law on the Profession of Advocate and Article 16.5 of the Charter.

The members of the Board are elected for a 4-year term. They can be re-elected without limitation. Even two terms add up to 8 years – a considerably long time to be in the governing body of bar association. First, it is recommended to limit the number of terms for Board members to no more than two consecutive terms. Second, the length of the term should be re-considered. Many European bar associations (especially the smaller ones) have the term of 3 years (Austria, Estonia, Finland, Sweden, etc.). There are also other options, e.g., the Danish model, where the term is 4 years, but re-election is only for a 2-year term. Same standards are applied to other bar associations in this report. The Chamber of Advocates referred to their practice that the composition of members of the Board is updated even during the term of office. However, changing members during the term may not be necessarily considered as a good tendency and as proof of sufficient change in the composition of the Board.

The Board of the Chamber of Advocates takes decisions by convening in a session of the Board, with the participation of the members of the Board (Article 16.7 of the Charter). Advocates may vote and act in accordance with their mandates at the sessions of the Chamber of Advocates (Article 16.6 of the Charter). Article 10 of the Law on the Profession of Advocate sets forth, that the members of the Board should vote in person at meetings of the Board.

Article 16.14 of the Charter stipulates, that the session of the Board of the Chamber of Advocates is competent when convened in accordance with the procedure defined by this Charter and has at least 7 (seven) members participating, including the Chairperson (or *charge d'affaires*), except for sessions on disciplinary sanctions (in which at least 6 (six) members should be participating).

In conclusion, the regulating of the forming and activities of the Board comply with European standards, except for the election term of the members of the Board.

#### **I.2.4. The Chairperson of the Chamber of Advocates**

The Chairperson is the highest official of the executive body of the Chamber of Advocates. The Chairperson is elected from among members having at least ten years' experience as practising advocates through closed voting by secret ballot, for a term of four years, but for no more than two consecutive terms.

Article 13 of the Law on the Profession of Advocate sets forth the procedure of the election of the Chairperson. The candidate receiving more than half of the votes is elected, but if none of the candidates receive the needed number of votes the second round of voting should be held.

The Chairperson, among his/her other responsibilities, has the competence to appoint and remove from office the head of staff and other staff members of the Chamber of Advocates, determine terms of reference of the staff of the Chamber of Advocates, enter the name of an advocate in the list of advocates, issue certificates of advocate, and their assistants and interns.

In conclusion, the election and activities of the Chairperson do comply with the European standards. But the number of consecutive terms and their length should be reconsidered in the same manner as for the members of the Board.

#### **I.2.5. The Disciplinary Committee**

Article 10 of the Law on the Profession of Advocate sets forth that the Board of the Chamber of Advocates resolves the issue of disciplining the advocate and imposing a disciplinary sanction. Historically there was a Disciplinary Committee, but due to various reasons the

system was not functioning properly, and disciplinary function was given to the Board. Disciplinary cases are now prepared by the advocates elected by the General Assembly, and the decision to impose disciplinary liability is made by the Board of the Chamber of Advocates.

The main function of the executive body is the representation of its members. Disciplining of the members is a function of a completely different nature, sometimes kept not only in the different body of the bar association, but even outside of the bar association (e.g., Norway, UK). There is no other European country where the executive body of the bar association would be given the disciplinary function, therefore setting a clear standard.

If Disciplinary Committee was not functioning properly, its work should have been improved instead of abolishing this body. There should be a separate disciplinary body established.

Another worrying aspect of disciplinary procedure is that according to Article 2.1.4 of the Regulation on Disciplinary Proceedings against Advocates, the Chairperson decides on the initiation of disciplinary proceedings. First, overburdening the Chairperson with such unusual functions weakens this position as the Chairperson has less time for policy matters and other regular functions for this position. Second, putting power to initiate (and not to initiate) disciplinary proceedings in the hands of solo elected official may create additional risks. Indeed the fact that the Chairperson is not participating in the proceedings and has no role in subjecting the advocate to disciplinary responsibility (this is done by the Board of the Chamber) creates some balance to this function, however there are no safeguards that would ensure that the power of initiating the disciplinary proceeding will not be abused for other than disciplinary purposes, e.g., in electoral campaign.

Therefore, the whole disciplinary procedure, including the bodies and their functions, has to be improved.

## **I.2.6. The Qualification Commission of the Chamber of Advocates**

The Qualification Commission is formed with the purpose of organising and summarising the results of qualification examinations. The Qualification Commission has eight members and is formed for a term of two years. The institutional composition of the Qualification Commission consists of four advocates, one representative from the Ministry of Justice of Armenia, one legal researcher from the Academy of Science of Armenia, a representative of the Court of Cassation of Armenia.

The Chairperson of the Chamber of Advocates is also a member of Qualification Commission ex officio and even the Chairperson of this commission. Such duality is difficult to understand. First, the Chairperson of the Chamber of Advocates is elected not because of his/her ability to organise qualification examinations. The skills and knowledge for the two positions are quite different. Second, the Chairperson of the Chamber of Advocates has many other important obligations and duties. Stacking such duties on the Chairperson weakens his/her ability to pay proper attention to other duties of the head of the bar association. It should be up to the Chamber of Advocates to decide who shall be representatives of advocates in the Qualification Commission. The provision setting that the Chairperson of the Chamber of Advocates is also the member of Qualification Commission ex officio and even the Chairperson of this commission does not comply with European standards.

## **I.2.7. School of Advocacy**

The School of Advocacy is a non-profit organisation having the status of a foundation, founded by the Chamber of Advocates. The governing body of the School of Advocacy is formed by the Chairperson and the Board of the Chamber of Advocates (Article 45.4 of the Law on Advocacy). The Chairperson of the Governing Board of the School of Advocacy is the Chairperson of the Board of the Chamber of Advocates (Article 45.4).

Again, the Chairperson of the Chamber of Advocates is also the Chairperson of the Governing Board of the School of Advocacy *ex officio*. This sets a weakening of the position of the Chairperson by stacking on this position additional duties. But also, potentially concentrates too much power in the hands of one person – the Chairperson. To some extent, it is understandable for the purpose of the oversight of the activities of the School for the Chairperson of the Chamber of Advocates or other member of the Board to be involved in the Governing Board of the School. In such case it would be sufficient for the Chairperson to be a member of the Governing Board of the School of Advocacy, but not its Chair – the Chairperson of the Chamber of Advocates would be involved in the activities of the School of Advocacy and at the same time not overburdened with the duties of the Chair of the Governing Body, e.g., setting the agenda of the meetings of the Governing Body, chairing its meetings.

During the initial phase of setting up the School of Advocacy the role of its Chair was much more important due to the importance of the process. But as the establishment is over, the day-to-day activities of the School of Advocacy should no longer involve the head of the bar association. This is also the practice in Croatia, Ireland, Germany, and other European states that have schools for lawyers within or next to bar associations – presidents of bar associations are not heads of schools for lawyers, but they often retain the right to propose the candidates for this position to the council. The management of the School of Advocacy should not be done by the Chairperson of the Chamber himself/herself, but this should in no way impede the full control of the School of Advocacy by the Chamber of Advocates.

### **I.2.8. Public Defenders Office**

Public Defender's Office is a structural subunit of the Chamber of Advocates through which public defence is carried out (Article 42 of the Law on the Advocacy). Considering that the Public Defender's Office is operating as an internal structure of the Chamber of Advocates, it is questionable if the legislator should set such detailed provisions regarding the internal bodies of the Chamber of Advocates. European countries have very different free legal aid systems. In some countries a separate state institution is established to coordinate state guaranteed free legal aid (e.g., Lithuania), in other legal aid is a completely a function of bar association (e.g., Estonia). When free legal aid is set as the function of bar association, usually legislator leaves for the bar association to decide internally how it will handle this function. Therefore, it would be according to the best practice that the organisation of public defence is left to the Chamber of Advocates to decide themselves.

The Board of the Chamber of Advocates appoints the Head of the Public Defender's Office (Articles 10 and 43 of the Law on Advocacy, Article 16.1 of the Charter) from among members with at least 10 years of professional experience and for a 4-year term.

There is no prohibition for the Head of the Public Defender's Office to be a member of the Board of the Chamber of Advocates. That may create a conflict of interests because the Board member, which is the Head of the Public Defender's Office, can influence the decisions of his/her own office. The Chamber of Advocates has confirmed that the Head of Public Defender's Office does not participate in the resolution of any issue related to the Public Defender's Office, which is an indirect acknowledgement of the probability of a conflict of interests. However, the Head of Public Defender's Office knows best all the issues regarding this institution, therefore he/she should participate in the discussion in the Board meetings when issues concerning the Public Defender's Office are discussed. At the same time, of it continues to be allowed to combine the position of the Head of the Public Defender's Office and the position of the member of the Board, clear rules regarding the conflict of interest should be introduced.

### **I.3. Interaction with other public authorities and organisations related to the profession of**

After completing interviews with representatives from relevant stakeholder institutions, no issues have been expressed regarding interaction with public authorities and other lawyer professions in the justice system.

Relationships of the Chamber of Advocates with judiciary and Ministry of Justice are regular working relations with no special comments.

There is a Youth Board of the Chamber of Advocates – an advisory body acting on a non-compensatory basis, which is founded by the decision N. 39-L of the Chairperson of the Chamber of Advocates (dated on 11/11/2013) for a term of 2 years. The Youth Board consists of the Chairperson and 7 members. The Chairperson appoints the members and the head of the Youth Board for a term of 2 years. Every advocate whose license is not suspended can be appointed as the Head of Youth Board.

The aim of the Youth Board is *inter alia* to support the procedure of integration in the professional sphere of young advocates and to raise the issues of young advocates emerging during their practice, to represent and introduce them to the Chamber.

The Youth Board organises its actions through the hearings. The hearings also can be convened by the initiative of the members of the Youth Board. The decisions of the Youth Board have advisory nature.

Armenian Young Lawyers Association (AYLA) is a non-governmental organisation, which was founded in 1995, by a group of students from the faculty of law at Yerevan State University with other young lawyers. The organisation was established having the aim of coordinating the efforts of its members and supporters, as well as of the new generation of lawyers, to promote the establishment of Armenia as a sovereign, democratic, legal, and social state.

Interviews with stakeholders have shown no particular issues requiring recommendations in the relationship of the Chamber of Advocates and the organisations mentioned above.

### **I.4 Gender Situation**

The gender equality situation in the Armenian Bar is considered good. The number of advocates in Armenia is 2264, out of which 1022 (45.14%) are female advocates. The Board of Advocates of the Chamber of Advocates consists of 12 members, out of which four are women (the number of female members was doubled after elections of the Board in 2021). The first Deputy Chairperson, the Financial Director, the Head of the Public Defender Office and her two deputies are also female. In the Youth Board in the Chamber of Advocates 5 out of 8 members, including the coordinator are females. There are no women advocates committees or associations in the Armenian Chamber of Advocates.

### **I.5. Recommendations and conclusions**

In conclusion, the internal structure of the Chamber of Advocates of Armenia does comply with European standards, but the internal structures of the Chamber are not independent enough from each other.

Some recommendations are provided below for the bar association to fully become self-governing and independent according to European standards:

1. The length of the term of Board members should be re-considered – it is recommended either to shorten the term to 3 years or leave 4 years for the first term and set 2 years for the second term.

2. The provision that the Board of the Chamber of Advocates resolves the issue of disciplining the advocate and imposing a disciplinary sanction does not comply with European standards and best practice existing in the Council of Europe member States (such a function can be found only in Armenia among the Council of Europe's member States). Therefore, it is recommended that a separate disciplinary body is established.
3. It is advisable to reconsider the provision setting that the Chairperson of the Chamber of Advocates is also the Chairperson of the Qualification Commission and the Chairperson of the Governing Board of the School of Advocacy ex officio..
4. The necessity to regulate in detail in the law the internal bodies of the Chamber of Advocates that organise public defence (Public Defender's Office) should be reconsidered.

If the position of the Head of the Public Defender's Office and the position of the member of the Board is maintained, clear rules regarding the conflict of interest should be introduced.



## **II. BELARUS**

### **II.1. National legal framework**

In the context of the bar associations in Belarus, Article 62 of the Constitution of Belarus is essential. Article 62 guarantees the right to the assistance of lawyers and one's other representatives in court.

The Law Belarus on the Bar and Advocacy Activity in Belarus (hereinafter, the Law on the Bar) is the main legal act that regulates the bar associations and advocacy activity in Belarus. The Law on the Bar states the principles of the organisation of the Bar and advocacy activity, regulates some of the rights and duties of the advocates, procedure of starting of advocacy activity, disciplinary responsibility of advocates, organisation of advocacy activities, regulation of the work and remuneration of advocates and interns and assistant advocate, interaction of the Bar with the state and public associations and advocates' self-governance bodies.

The Rules of Professional Ethics of Advocates are also important in analysing the bar associations in Belarus. The Rules are based on high moral standards and traditions of legal practice as well as on international standards and rules of the legal profession, and represent the list of provisions determining requirements for the personality of an advocate and his/her behaviour in course of professional duties' performance, as well as during his/her interrelations with clients, colleagues, self-management advocatory bodies, governmental authorities, law enforcement authorities and courts, other organisations and officials.

There are also some other relevant legal acts, namely Decrees by the President of Belarus on dissolution of territorial bar associations (association of the city of Minsk and district association) and advocates bureaus and on the state registration of the Republican and territorial bar associations (bar association of the city of Minsk and district associations) and advocates bureaus.

### **II.2. Organisational structure of the bar association**

Clause 40 of the Law on the Bar and Advocacy sets forth that the congress of advocates and bar associations are the advocates' self-governing bodies in Belarus.

The system of self-governing bodies of lawyers consists of territorial (Minsk city and regional) bar associations, Belarusian Republican Bar Association (national bar association) and the congress of advocates. Such system, considering the size of Belarus and the number of advocates, complies with European standards and best practices of the Council of Europe member States. But it is not understandable why the congress of advocates is separate from Belarusian Republican Bar Association.

#### **II.2.1. Belarusian Republican Bar Association**

The Belarusian Republican Bar Association is a non-profit organisation based on mandatory membership of territorial bar associations (Article 46). The competence of the Republican Bar Association includes *inter alia* representation and protection of the interests of advocates in relations with state authorities and other organisations, coordination of the activities of territorial bar associations. The Republican Bar Association has these bodies: the Council of the Republican Bar Association, the Chairperson of the Belarusian Republican Bar Association, Audit Commission, and the Disciplinary Commission.

### **II.2.1.1. The Council of the Belarusian Republican Bar Association**

The Council of the Republican Bar Association is a collegial executive governance body (Article 47). The Council is formed from chairpersons and other representatives of territorial bar associations, elected for a term of four years. They can be re-elected without limitation. Even two terms add up to 8 years – a considerably long time to be in the governing body of bar association. First, it is recommended to limit the number of terms for Council members to no more than two consecutive terms. Second, the length of the term should be re-considered. Many European bar associations (especially the smaller ones) have the term of 3 years (Austria, Estonia, Finland, Sweden, etc.). There are also other options, e.g., the Danish model, where the term is 4 years, but re-election is only for a 2-year term.

The Council is formed from the two representatives of each territorial bar association and the chairpersons of the territorial bar associations. It is not clear whether the chairperson is included as one of those two representatives, therefore it is not clear whether there are two or three representatives of each territorial bar association in the council of the Belarusian Republican Bar Association.

The Charter of the Belarusian Republican Bar Association states, that the election procedure of the representatives of the territorial bar association to the Council is determined in the charters of these territorial bar associations (Article 8).

The powers of the Council may be terminated before the expiration of the term by decision of the Congress of Advocates for non-compliance with the requirements of the Council, provided by the Law on the Bar and the Charter of the Belarusian Republican Bar Association (Article 9). The Congress of Advocates is not a governing body of the Belarusian Republican Bar Association; therefore, it should not have the competence of terminating the powers of the Council.

The Council decides the number of the representatives in the congress of advocates (Article 11).

Meetings of the Council of the Belarusian Republican Bar Association are convened by the Chairperson of the Belarusian Republican Bar Association and are held at least once every three months. The competence of the Council of the Belarusian Republican Bar Association includes representation of interests of advocates in state authorities and other organisations, coordination of activities of the territorial bar associations, approval of the Rules of Professional Ethics of an Advocate and other responsibilities. One of the competencies of the council of Belarusian Republican Bar Association is to determine the procedure for territorial bar associations staffing upon agreement with the Ministry of Justice. According to the Principle 5 of the Recommendation on the freedom of exercise of the profession of the lawyer bar associations should be self-governing and independent of the authorities and public. Determination of staffing of territorial bar associations could be a competence of the Council of Belarusian Republican Bar Association, however the need for an agreement with the Ministry of Justice does not comply with European standards and the principle of the independence of the bar associations.

### **II.2.1.2. The Chairperson of the Belarusian Republican Bar Association**

The Chairperson of the Belarusian Republican Bar Association and his/her deputy are elected by the members of the Council of the Belarusian Republican Bar Association from the Council of the Belarusian Republican Bar Association for a term of four years upon the agreement with the Ministry of Justice. According to the Principle 5 of the Recommendation on the freedom of exercise of the profession of the lawyer bar associations should be self-governing and independent of the authorities and public. The provision that there should be an agreement

with the Ministry of Justice when electing the Chairperson and his/her deputy contradicts the principle of independence of bar association and therefore does not comply with the European standards.

The Chairperson represents the bar association in relations with state authorities, public associations, and other organisations, as well as with natural persons, acts on behalf of the bar association without power of attorney, convenes, holds the meetings of the bar association council, convenes the advocates' congress and has other duties. Just like chairpersons of territorial bar associations the chairperson of the Belarusian Republican Bar Association has quite a few administrative duties. The focus of the Chairperson of the Belarusian Republican Bar Association should be on policy issues. Therefore, it is very important that the Chairperson has the right to delegate administrative duties to other staff members. Many European bar associations have a senior staff member (called secretary general, executive director, chancellor or otherwise), who is granted administrative functions in the bylaws or other secondary legislation. The possibility of the chairperson to delegate administrative functions to other persons than his(her) deputy is questionable according to the Law on the Bar. The inability of the chairperson to delegate administrative functions would be interference in self-regulation of the bar association, weakening of bar association by putting unnecessary function burden on the head of bar association and therefore would not comply with European standards.

Chairperson of the Belarusian Republican Bar Association may be revoked early in case of systematic violation of the requirements of the law by the decision of the Ministry of Justice (Article 12). Powers of the Chairperson of the Belarusian Republican Bar Associations may be terminated at the suggestion of more than half of the members of the Council of the Belarusian Republican Bar Association for failure to comply with the requirements of the Law on the Bar and the charter of the Belarusian Republican Bar Association. This competence of the Council does comply with European standards.

The number of consecutive terms and their length should be reconsidered in the same manner as for the members of the Council.

### **II.2.1.3. The Audit Commission of the Belarusian Republican Association**

The Audit Commission of the Belarusian Republican Bar Association, which includes one representative from each territorial bar association, is elected for a four-year term to monitor the financial and economic activities of the bar associations. The main competence of the audit commission of the Belarusian Republican Bar Association is to carry out audit of financial and economic activities of the council of the Belarusian Republican Bar Association.

### **II.2.1.4. The Disciplinary Commission of the Belarusian Republican Association**

The Disciplinary Commission of the Republican Bar Association consists of one representative from each territorial bar association, elected for a term of four years. The main powers of the Disciplinary Commission of the Belarusian Republican Bar Association are consideration of complaints against the decisions on bringing an advocate to disciplinary responsibility or on termination of disciplinary proceedings against an advocate.

## **II.2.2. Territorial bar associations**

The territorial bar association is a non-profit organisation based on mandatory membership of advocates of a separate administrative division (Article 41). The competence of territorial bar association includes *inter alia* representing and protecting interests of advocates of the territorial bar association (Article 42). The advocates are members of the territorial bar associations, not the Belarusian Republican Bar Association.

The main document defining the procedure for the internal organisation and activities of the territorial bar association, the status of governance bodies and other issues relating to the activities of the territorial bar association is the charter of territorial bar association (Article 41). The charter of the territorial bar association shall be developed based on the model charter of the territorial bar association approved by the council of the Belarusian Republican Bar Association – such model reflects good practice of European bar associations.

The territorial bar association has the following bodies: the general meeting (conference) of members of the territorial bar association, the council of the territorial bar association, the chairperson, the audit commission, and the disciplinary commission.

### **II.2.2.1. The General meeting of the territorial bar association**

The general meeting (conference) of members of the territorial bar association is the supreme governing body of the territorial bar association (Article 43). The council or at least one third of the members of the bar association have the obligation to initiate the convening of the general meeting. The general meeting must be held at least once a year.

Among its other responsibilities the general meeting elects the members of the council of the territorial bar association for a four year term, elects the chairperson of the territorial bar association and his/her deputy from the members of the council, elects the members of the audit and disciplinary commissions of the territorial bar association, elects the representative of the territorial bar association to the qualification commission and the representatives of the territorial bar association to the council of the Republican Bar Association, audit and disciplinary commissions of the Republican Bar Association, representatives for participation in the congress of advocates. The decision of the general meeting (conference) is adopted by a simple majority of votes of the members of the bar association present by secret or open ballot and can only be revised by the general meeting (conference) of the bar association.

The Law on the Bar does not provide requirements when territorial bar association must organise general meeting and when – conference, leaving this to be regulated by the charter of territorial bar association.

The number of consecutive terms and their length of the elected offices in territorial bar associations should be reconsidered in the same manner as for the members of the Council of Belarusian Republican bar association.

The charter of Minsk city territorial bar association establishes, that the Counting Commission confirms the presence of a quorum of the general meeting (conference) of the members of the bar association, explains the voting procedure on issues put to vote, ensures compliance with the established voting procedure, counts votes, and sums up the voting results, draws up and transfers to the Board of the bar association a protocol on voting results and ballots for voting (by secret ballot).

### **II.2.2.2. The Council of the territorial bar association**

The council of the territorial bar association is a collegial supreme executive governing body of the territorial bar association. The chairperson of the territorial bar association convenes the meeting of the council at least once a month. Although requirement to meet regularly has good

intentions, the abovementioned provision is not pragmatic – on some months meetings are difficult to convene due to holiday season or other reasons, therefore if the legislator is willing to set to the minimum frequency of council meetings, it should be one every other month. The decision is considered adopted if more than half of the total number of the council members present at the meeting voted for it. In case of equality of votes when deciding, the vote of the chairperson at the meeting of the council is decisive.

The competence of the council of the territorial bar association includes decision making on admission to membership and the exclusion from the territorial bar association, coordination of decisions of advocates on the type of advocacy activity, decision making on suspension and resumption of advocacy activity, support of advocates, representation of the interests of advocates, review of complaints (submissions, determinations) regarding the actions of lawyers of the territorial bar association and decision making on initiation of disciplinary proceedings against advocates and carrying out other responsibilities, stated in the Article 43 paragraph 9 of the Law on the Bar. The Law on the Bar leaves it to the charter to set the number of members of the council.

The charter of the Minsk city territorial bar association states that the number of members of the council of the territorial bar association may not be less than 7 members of the council (Article 13). A lawyer who has been practicing law in the Bar for at least ten years may be elected to the council.

One member of the council is elected from lawyers working in legal consultations of each district of Minsk (regardless of the number of legal consultations), one member of the council from specialised legal consultations, two members of the council from law firms and two members of the council from lawyers practicing law individually. This is not a common practice of election of the members of the council, some questions arise: are these candidates to the council approved by someone, what is the procedure of election, what happens if one or some of the candidates do not get elected?

The council of the territorial bar association decides whether to organise a general meeting of the members of the territorial bar association or a conference of the delegates (Article 14).

### **II.2.2.3. The Chairperson of the territorial bar association**

The chairperson (in his/her absence - deputy chairperson) who is elected from the members of the council of the territorial bar association for a four-year term represents the bar association in relations with state authorities, public associations, and other organisations, as well as with natural persons, acts on behalf of the bar association without a power of attorney. The chairperson also has quite a few administrative duties, for example makes transactions on behalf of the bar association, employs and dismisses employees of the bar association or organises consideration of requests from citizens. It should be noted that the chairperson of the territorial bar association should focus on policy issues. If administrative duties threaten to occupy most of chairperson's working time, he(she) should delegate these duties to other staff members of territorial bar association.

The chairperson of the territorial bar association is elected by the general meeting of the members of the territorial bar association (Article 19). But the Ministry of Justice approves the candidates for the positions of chairpersons of bar associations (Article 38 of the Law).

### **II.2.2.4. The Audit Commission of the territorial bar association**

There is a control body for financial and economic activities of the territorial bar association - audit commission of the territorial bar association. Audit commission consists of at least three advocates who are members of this territorial bar association and are elected by the general meeting for a term of four years. The audit commission of the territorial bar association carries

out audit of financial and economic activities of the council of the bar association, advocates and legal consultations and other duties. Advocates and employees of the bar association are obliged to submit to the audit commission all requested documents and explanations relating to financial and economic activities.

#### **II.2.2.5. The Disciplinary Commission of the territorial bar association**

There is a disciplinary commission of the territorial bar association, quantitative composition of which is approved by the general meeting of the territorial bar association for a term of four years. The disciplinary commission of the territorial bar association may not include members of the councils of bar associations, as well as the disciplinary commission of the Belarusian Republican Bar Association. The main competence of the disciplinary commission is to consider disciplinary proceedings.

#### **II.2.2.6. Other provisions regarding the territorial bar association**

Advocates receive remuneration for the days of participation in the work of the governance bodies of the bar association, but other activities in the governance bodies of the territorial bar association should be on a voluntary basis (Article 41). Although many European bar associations do not remunerate advocates for participation in the work of self-governing bodies, remuneration issue is not a subject for legislator and should be left for the bar association to decide. Requirement for advocates to perform their activity in territorial bar associations on voluntary basis might weaken bar associations because it might limit bar association's possibilities in involve best advocates in the activities of self-governing bodies and therefore does not comply with European standards.

The charter of territorial bar association states other, more specific provisions, regarding the organisational structure of territorial bar association. Since most of the charters of different territorial bar associations contain similar provisions, the charter of Minsk city territorial bar association will be analysed.

The charter of Minsk city territorial bar association states that the general meeting of the members of the territorial bar association can be initiated by the council of the territorial bar association, at least one third of the members of the Minsk city territorial bar association or the Ministry of Justice of Belarus (Article 10). The general meeting of the territorial bar association should not be a concern of the state institution; therefore, it is not necessary for the Ministry of Justice to be involved in initiating of the general meeting of the territorial bar association.

Representatives for the general meeting of the territorial bar association are elected at meetings of lawyers in legal consultations, law firms (Article 10). Legal consultations and law firms with less than 5 people and lawyers practicing law individually, elect their representatives at joint meetings, in accordance with the established rules of representation. The council of the territorial bar association convenes those meetings. The norm of representation of members of the territorial bar association for participation in the general meeting is established by the council and cannot be less than one representative from five lawyers of the territorial bar association.

A member of Minsk city territorial bar association may not be a member of another territorial bar association (Article 35).

In conclusion, the organisational structure of territorial bar associations complies with European standards, except for the powers of the Ministry of Justice to approve candidates for the position of the chairperson. Many organisational issues are left for the charter of territorial bar association, i.e., for the advocates to decide themselves. The system of forming bodies of territorial bar association is democratic. The requirement for advocates to participate in bodies of territorial bar association on voluntary basis should be waived. Some minor amendments of

the provisions on territorial bar associations could also improve the legal environment for territorial bar associations.

### **II.2.3. The Qualification Commission for Advocacy Activity in Belarus**

The qualification commission is established under the Ministry of Justice. The qualification commission organises the qualification exam for the candidates to become advocates. The qualification commission checks applicants for compliance with the requirements provided for by the Law on the Bar, makes a reasoned decision on admission or refusal to admit an applicant for the qualification exam and performs other actions regarding the qualification exam.

The qualification commission consists of the Chairperson of the Belarusian Republican Bar Association, one representative from each territorial bar association, one representative from the Supreme Court of Belarus, the General Prosecutor's Office of Belarus, and other state authorities, five representatives from the Ministry of Justice of Belarus and two representatives from scientific organisations.

The head of the qualification commission is the Deputy Minister of Justice of Belarus.

### **II.2.4. Congress of advocates**

The congress of advocates is the supreme body of advocate's self-governance bodies (Article 50). The congress of lawyers is convened by the chairperson of the Belarusian Republican Bar Association at the request of at least one third of the total number of members of the territorial bar associations. General meetings (conferences) elect representatives of territorial bar associations take part in the congress of advocates. The norm of representation from territorial bar associations is determined by the council of the Belarusian Republican Bar Association, considering the need for ensuring the equal participation of representatives of all territorial bar associations, which shall be not less than thirty representatives from each territorial bar association. This provision raises issues about equal representation of advocates as territorial bar associations are very different in size (number of members) and an equal number of representatives from each territorial bar association would not adequately represent different territorial bar associations. It is proposed to elect representatives in proportion to the number of members of each territorial bar association.

Although congress is self-governance body of advocates, a representative of the Ministry of Justice shall be included in the working bodies of the congress of advocates, and representatives of other state authorities, public associations, and legal scholars may also be included. Such requirement is a direct violation of the independence of bar association and does not comply with European standards – according to the Principle 5 of the Recommendation on the freedom of exercise of the profession of the lawyer bar associations should be self-governing and independent of the authorities and public.

The powers of the congress of advocates include consideration of actual problems of improvement of the Bar and advocacy activity, discussion of issues of improvement of the quality of provision and accessibility of legal assistance, submission of proposals on improvement of the law, hearing the report of the Belarusian Republican Bar Association chairperson on the work of the Belarusian Republican Bar Association council and consideration of other questions of the organisation of the Bar's activity.

In conclusion, provisions on the congress of advocates in general comply with European standards, except the obligatory inclusion of the representatives of the Ministry of Justice in the bodies of the congress. Although the congress of advocates is not considered a part of Belarusian Republican Bar Association, it is still one of the advocates' self-governing bodies and therefore all the standards for bar associations apply to the congress as well.

### II.3. Powers of the Ministry of Justice

Article 38 states the powers of the Ministry of Justice in the field of advocacy activity. It should be noted that the Ministry of Justice has a number of excessive powers in the field of advocacy activity that do not comply with the European standards, mainly the Principle 5 of the Recommendation on the freedom of exercise of the profession of the lawyer bar associations should be self-governing and independent of the authorities and public. First, the development of the Rules of Professional Ethics of an Advocate on the proposals of advocates and advocate formations and their approval should be the competence of the Belarusian Republican Bar Association. The provision of the Law on the Bar is formed so that the development of the Rules of Professional Ethics of an Advocate is a responsibility of the Ministry of Justice. The Belarusian Republican Bar Association can only agree or disagree with the Rules of Professional Ethics of an Advocate developed by the Ministry of Justice. The distribution of powers should be the opposite - the Belarusian Republican Bar Association should develop the Rules and the Ministry of Justice should only have the power to agree or disagree with the Rules.

Second, the Ministry of Justice has the power of removal of an advocate from performance of professional duties for the period of disciplinary proceedings in the event of their initiation by the Minister of Justice. Principle VI.2 of the Recommendation on the freedom of exercise of the profession of lawyer sets forth that bar associations should be responsible for the conduct of disciplinary proceedings concerning lawyers. Basic Principles on the Role of Lawyers (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) states that charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. The power of the Ministry of Justice to remove the advocate from performance of professional duties does not reflect the implementation of this principle. Therefore, such above-mentioned provision does not comply with European standards.

Third, the Ministry of Justice has too much competence in the field of submission, approval and early withdrawal or termination of powers of chairperson of bar associations. Principle 5 of the Recommendation on the freedom of exercise of the profession of lawyer states, that bar associations must be self-governing bodies and be independent of authorities and public. The following powers of the Ministry of Justice do not comply with European standards and violate the principle of independence of the bar associations:

- submit the proposals to the governing bodies of the bar associations on candidates for election to the positions of chairperson of bar associations;
- approve of candidates for the positions of chairperson of bar associations and heads of legal consultations;
- make a submission for consideration of the general meeting (conference) of the territorial bar Association (council of the Belarusian Republican Bar Association) on early withdrawal of the chairperson of the territorial bar association (chairperson of the Belarusian Republican Bar Association) who systematically violates the requirements of the law, taking other measures to eliminate the identified violations;
- insist on early termination of the powers of the chairperson of the bar association based on the Qualification Commission's conclusion in case of unjustified refusal to satisfy the submission of the Ministry of Justice of Belarus on early withdrawal of the chairperson of the bar association for systematic violation of the requirements of the law.

Fourth, the Ministry of Justice has the power to suspend the decisions of bar association's governing bodies, bar association's chairperson (deputy chairperson) which do not correspond to the Law on the Bar and Advocacy or are adopted in violation of the established procedure and making submissions to these bodies (officials) to abolish such decisions, as well as approaching the court with applications to abolish these decisions in case of unjustified refusal



to satisfy the relevant submission. This provision violates the independence of the bar associations and therefore does not comply with European standards. It is acceptable, that the Ministry of Justice has the right to approach the court with application to abolish the decisions in case of unjustified refusal to satisfy the relevant submission, but the Ministry of Justice should not be able to suspend the decisions of bar association's bodies by itself, without a decision of the court.

Although stakeholders pointed out that the Ministry of Justice has never used their power to suspend any decision of bar association's governing bodies, this does not annul the non-compliance with European standards.

## **II.4. Interaction with other public authorities and organisations related to the profession of lawyer**

Chapter 6 of the Law on the Bar regulates the interaction of the bar with the state and public associations. Article 37 sets forth that the state guarantees to advocates the possibility of advocacy activity and contributes to the creation of the necessary conditions, ensures the independence of activities of the bar, availability of legal assistance, as well as cooperation of state authorities and advocates' self-governance bodies in ensuring the protection of rights, freedoms and interests of citizens, provision of legal assistance to natural and legal persons. These provisions comply with the European standards.

Article 39 regulates the interaction of the bar and public associations. It sets forth that advocates can cooperate with public associations of lawyers, other citizens in ensuring the rule of law and order, legal education of citizens, study of law enforcement practice, preparation of mutually agreed proposals for improving law and in other directions. These provisions follow the best European practice and comply with European standards.

There is a Belarusian Association of Women Lawyers – a public association, which focuses on women rights and promoting the development of legal science and raising the professional level of its members.

There is a Council of young lawyers of Belarusian Republican Bar Association. This council operates in the similar manner as the Republican Bar Association.

Interviews with stakeholders have shown no issues requiring recommendations in the relationship of the Bar and the organisations mentioned above.

## **II.5 Gender Situation**

The gender equality situation among the Belarusian advocates is good. There are 2047 lawyers in Belarus, 1272 of them are women (62 %). The council of the Belarusian Republican Bar Association includes 21 lawyers, 15 of them (71%) are female. There is no commission for female lawyers, but there is active organisation of Female Jurists.

## **II.6. Recommendations and conclusions**

In conclusion, the excessive involvement of the Ministry of Justice in the activities of the bar associations in Belarus does not comply with European standards.

Some recommendations are provided further for the bar association to become self-governing and independent according to European standards:

1. Consider including Congress of Advocates as internal body of the Belarusian Republican Bar Association.

2. The remuneration of the advocates, who carry out activities in the governance bodies of the territorial bar association, should not be regulated by the legislator and should be left to decide in the charters or other internal documents.
3. The Council of the Belarusian Republican Bar Association should not be restricted by the agreement with the Ministry of Justice when determining the procedure for territorial bar associations staffing.
4. The Ministry of Justice should not have the power to agree or disagree with the candidate for the position of the chairperson of the Republican Bar Association. The chairperson should be elected from the members of the council, without the involvement of the Ministry of Justice.
5. Development of the Rules of Professional Ethics of an Advocate on the proposals of advocates and advocate formations and their approval should be the competence of the Belarusian Republican Bar Association. The Ministry of Justice should only have the power to agree or disagree with the Rules of Professional Ethics of an Advocate.
6. The Ministry of Justice should not have the power of removal of the advocate from performance of professional duties for the period of disciplinary proceedings in the event of their initiation by the Minister of Justice.
7. The Ministry of Justice should not have any competence in the field of submission, approval and early withdrawal or termination of powers of chairperson of bar associations. The Ministry of Justice should not be able to submit the proposals to the governing bodies of the bar associations on candidates for election to the positions of chairperson of bar associations, approve of candidates for the positions of chairperson of bar associations, make submissions for consideration of an early withdrawal of the chairperson of the territorial bar association early withdrawal or insist on termination of powers of chairperson of bar associations.
8. The Ministry of Justice should not have the right to suspend the decisions of bar association by itself, without the decision of the court.

## **III. GEORGIA**

### **III.1. National legal framework**

The legal profession in Georgia is regulated by:

1. Article 31 section 3 of the Constitutional Law of Georgia No 2071 of 23 March 2018;
2. the Law of Georgia on Lawyers of 20 June 2001;
3. the Law of Georgia on Legal Aid of 13 December 2013 [Legislative Herald of Georgia 24 02.07. 2007 document number 4955];
4. the Charter of the Georgian Bar Association as amended on 23 December 2018.

According to Article 31 section 3 of the Constitutional Law of Georgia the unrestricted exercise of the rights of a lawyer, as well as the right of lawyers to self-organisation, shall be guaranteed by law.

The Law of Georgia on Lawyers regulates the practice of the profession of lawyer, sets the principles of the practice of the profession of lawyer, regulates rights and obligations of lawyers, organisation of the practice of the profession of lawyer and regulates Georgian Bar Association.

The Charter of the Georgian Bar Association regulates goals, functions and activities of the Bar, Bar membership and management, functioning of the Ethics Commission and Audit Commission and property of the Bar.

Other rules and regulations related to bodies of the bar, accreditation and education of advocates can be found in the following acts:

1. the Regulations of the Georgian Bar Association General Meeting;
2. the Regulation on Professional Adaptation Program;
3. the Accreditation Rules;
4. the Rules of conduct and appeal for electronic bar qualification exam;
5. the Rules for Continuous Legal Education;
6. the Regulation on the Georgian Bar Association Training Centre;
7. the Regulation on Educational Council;
8. the Regulation on Disciplinary Liability and Disciplinary Proceedings of Lawyers with amendments adopted on 23 December 2018;
9. the Code of Professional Ethics for Lawyers.

### **III.2. Independence of the Bar**

According to Georgian law the Georgian Bar Association is a legal entity under public law and is subject to the Law on Associations except some limitations ensuring the institutional independence of the Bar outlined in Article 20 sec. 3 of the Law of Georgia on Lawyers

According to law and existing practice the Georgian Bar is self-regulatory because it establishes its internal law which is published at the Bar website.

The Georgian Bar is not financed from the state budget and its independence from state authorities is perceived by many advocates as a crucial value.

Financial resources gathered from subscription, payment of which is obligatory for all practising advocates, seem to be adequate since the Bar has just started to build a building to host Bar premises.

On the other hand, the following facts may indicate that there is a shortage of resources in the Bar:

- travel expenses of advocates who attend the General Assembly are not reimbursed,
- the members of the Bar Council do not receive any remuneration
- the President of the Bar does not receive any remuneration,
- members of other bodies of the Bar including chairpersons of Bar committees' do not receive any remuneration,
- advocates who are on the list of advocates, but do not practice, do not pay a subscription at all,
- collectability of subscription is poor,
- the execution of collection of subscription needs improvement.

Needless to mention, that each bar needs sufficient financial resources for effective functioning therefore it is recommended to increase income from subscription. A more detailed proposal on how to increase income from subscription can be found in point I.2 of the Annex 1.

### **III.3. Organisational structure of the bar association**

According to Article 23 of the Law of Georgia on Lawyers, the bodies of the Bar are:

1. the Executive Board;
2. the Ethics Commission;
3. the Audit Commission.

It is not clear whether the Chairperson of the Bar is also a body of the Bar or only the Chairperson of the Executive Council.

The following bodies are not listed in Article 23 of the Law of Georgia on Lawyers:

1. the General Assembly of the Bar Association (Article 24);
2. the Training Centre for Lawyers (Article 23 section 3).<sup>5</sup>

#### **III.3.1. General Assembly**

The General Assembly of the Bar Association is the supreme body of the Bar (Article 24 section 1 of the Law of Georgia on Lawyers and Article 12 section 1 of the Charter).

The General Assembly of the Bar Association is composed of all practising advocates. There are 9 352 advocates listed at the roll of advocates, including 4 858 practising advocates. Only practising advocates are authorised to participate in the General Assembly. It means that 4494 non-practising advocates cannot participate in the General Assembly. While the non-practising advocates are also members of the Bar. In this context the non-practising advocates should not be deprived of the right to participate in the General Assembly.<sup>6</sup> On the other hand, the

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<sup>5</sup> The status of the Training Centre for Lawyers is unclear: if it is not a separate body of the Bar then it should not be mentioned in article 23 section 3. Reportedly, this discrepancy is solved in the amendments proposed by the GBA.

<sup>6</sup> Similar approach is in Italy, Spain (vote of practicing lawyers is double the value of non-practicing) and other European countries.

practice of depriving the non-practicing members of the bars of the decision-making process can be found in some of the Council of Europe member States<sup>7</sup>. Nonetheless, if the Georgian Bar Association prefers to keep the current structure when the non-practicing members are not authorised to participate in the General Assembly, the relevant legal provisions should be amended accordingly.

The number of advocates in Georgia will grow quickly because now more advocates are needed after new law has entered into force which requires the presence of an advocate during interrogation by Police. Around 3 500 advocates practice in Tbilisi, the rest of approximately 1 200 practices outside capital city. The last General Assembly election took place in a sports hall with 2 324 attendees. Such large number of participants unavoidably causes long queues to enter the room, long queues to get a voting card, long time needed for voting and makes any discussion practicably impossible. Interns (who should be members of the Bar) do not have the right to take part and vote during the General Assembly of the Bar Association.

To solve the above-mentioned practical problems with smooth running of a General Assembly and increase advocates' participation in decision making it is recommended to lower the number of participants of the General Assembly of the Bar to maximum 200 advocates or interns by introducing a system in which the General Assembly of the Bar is composed of delegates previously elected in such a way that there is 1 delegate for 50 advocates or interns. More detailed proposals how such system might be organised can be found in point 5 of the Annex 1.

To avoid possible overrepresentation of advocates from Tbilisi in the General Assembly it is recommended to:

- organise a free of charge transport to the venue of the General Assembly from four existing regional offices of the Bar and back (which must be paid by the Bar and absolutely may not be paid by any candidate running in any elections) or reimburse travel expenses for all delegates who choose to travel on their own (either in car or in public transport);
- allow remote participation in the General Assembly from four existing regional offices of the Bar in four major cities together with the possibility of electronic vote from there.

The Law of Georgia on Lawyers does not specify who has the right to convene the General Assembly of the Bar Association (it is regulated at the level of the Charter only).

According to Article 13 section 3 of the Charter as a rule the Chairperson has the right to convene the General Assembly of the Bar Association.

It is not clear who shall convene the Extraordinary General Assembly of the Bar Association in situation described in Article 13 section 4 of the Charter – i.e., upon initiative of the Executive Board of the Association, Audit Commission, Ethics Commission and at least 10 percent of the Association members: the Chairperson or the body who has had such initiative. Therefore, it is recommended to amend the Charter in such a way so that it will be clear that the President of the Bar has the right to convene the General Meeting. More detailed proposals can be found in point I.6 of the Annex 1.

It is also recommended to introduce a new section 1d in Article 24 of the Law of Georgia on Lawyers: "The General Assembly of the Bar Association is convened by the President of the Bar. The Extraordinary General Assembly of the Bar Association may also be convened by the

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<sup>7</sup> Similar approach is in France, Latvia, Lithuania and other European countries.

Executive Board, the Audit Commission, the Ethics Commission or by appointed representative of at least 10 percent of the Association members.”

The Law of Georgia on Lawyers does not make it clear that each advocate has the right to vote and the right to be elected as member of Bar bodies. The Law does not make it clear that each advocate has one vote.

The Law of Georgia on Lawyers does not make it clear that an advocate may either exercise his/her right to vote in person or by proxy. At present vote by proxy is not allowed. To vote an advocate must be present in person which causes long queues to collect a voting card. Therefore, it is recommended to allow to vote by proxy following the best practices of the Council of Europe member States. More detailed proposals can be found in point 7 of the Annex 1.

According to Article 24 section 1 of the Law of Georgia on Lawyers, the General Meeting shall be held at least once a year and it shall be duly constituted if attended by at least 800 members of the Bar Association. The same is repeated in Article 13 section 1 of the Charter.

At present 9 352 advocates are Bar members, out of them 4858 practicing advocates. Therefore 800 out of 9 352 is only 8,5 % and out of 4858 is only 16,5 %. Firstly, the quorum requirement is usually much higher in other European Bars. Secondly, as an overall number of advocates is growing the quorum requirement should rather relate to the number of advocates on the roll instead of a specific number of persons who must be present.

Therefore, taking into consideration earlier recommendation to introduce delegates on one hand, and being aware that not all delegates may be eventually elected in some elections regions on the other hand, it is recommended that the General Meeting shall be held at least once a year and it shall be duly constituted if attended by delegates representing at least half of advocates and at least  $\frac{1}{4}$  of interns, which will be in line with the best practices of the Council of Europe member States.

According to Article 24 section 2 of the Law of Georgia on Lawyers, a decision is made by a simple majority of the members present and voting, unless otherwise provided for by the legislation of Georgia.

According to Article 13 section 2 of the Charter, the General Meeting takes decisions by a simple majority of the members present at the open ballot unless otherwise provided for by the Law of Georgia on Lawyers and this Charter.

Therefore, the Charter contradicts the Law of Georgia on Lawyers because according to Article 24 section 1 of the Law of Georgia on Lawyers exceptions can be provided for by the legislation of Georgia, but according to Article 13 section 2 of the Charter exceptions can be provided either by the Law of Georgia on Lawyers or by the Charter. The Charter broadens the exception by referring to the Charter – which is not the legislation of Georgia. The Charter may not change provisions of the Law of Georgia on Lawyers.

The competences of the General Assembly of the Bar Association are listed in Article 24 section 3 of the Law of Georgia on Lawyers (5 competences) and also in Article 12 section 2 of the Charter (10 competences). Therefore, there are discrepancies in the list of competencies.

According to Article 13 section 3 of the Charter, Association Chairperson has the right to convene the General Meeting and to serve as the Chairperson during the meeting. Unfortunately, this is not a good model because the General Assembly of the Bar Association elects the Chairperson of the Bar. Any Chairperson of the Assembly has strong influence over what is happening during such Assembly. When the Chairperson of the Assembly is at the same time running as a candidate for the President of the Bar – then he or she is in a conflict-of-interest situation.

To avoid any problems which might arise when a Chairperson of the Assembly is at the same time running as a candidate for the President of the Bar – it is recommended that the General

Assembly of the Bar Association should separately elect a Chairperson of the Assembly at the beginning of a meeting following the best practices of the Council of Europe member States. Candidates for any functions in Bar bodies should not be a Chairperson of the Assembly. It could be new section 3a in Article 13 of the Charter.

The too large number of advocates attending the election General Assembly is the main obstacle to the effective functioning of the General Assembly of the Bar. Proposed remedies have already been indicated above.

### **III.3.2. The Executive Board**

The Executive Board is an executive body of the Bar Association. It shall consist of 12 members, out of which 11 members shall be elected by the General Assembly of the Bar Association.

The Chairperson of the Bar Association shall, by virtue of his/her position, be a member of the Executive Board of the Bar Association.

Candidates who receive more votes than other candidates shall be deemed to be elected as members of the Executive Board.

A more detailed election procedure is set up by Article 13<sup>1</sup> of the Charter, which insure democratic and efficient regulations:

*13<sup>1</sup>.1. Within seven days of the date of the announcement of the General Meeting, a candidate for the office of the Association Chairperson, membership of the Executive Board, Ethics Commission or Audit Commission shall submit an application to the staff of the Association. The application should include the name and surname of the candidate, the list number of the member of the Association, information about his / her employment at a law firm, professional experience, length of work as a lawyer, his / her actual address and telephone number (24.10.2015).*

*2. A candidate is eligible to nominate his / her candidacy in only one elected body.*

*3. The Bar Association shall ensure that the information submitted by the candidate meets the mandatory requirements within three days of receiving the application. If the information submitted by the candidate meets the requirements of the legislation and this Charter, the Executive Board of the Association shall ensure that the candidate is registered and included in the ballot paper.*

*4. Nomination of candidates on Election Day is inadmissible.*

*5. A person may withdraw his / her candidacy prior to the start of voting. In such case, the ballot paper shall be marked alongside the candidate's name –" candidacy withdrawn", and the votes received by such a candidate shall not be counted.*

Such regulation which requires all candidates to apply within seven days of the date of the announcement of the General Meeting is democratic and complies with the best practice of the Council of Europe member States. It helps to prepare the General Assembly of the Bar Association, print voting cards etc.

11 members of the Executive Board shall be elected for 4 years.

The General Meeting of the Bar Association shall elect a Chairperson of the Bar Association for four years.

The Executive Board meeting of the Association is held at least once a month.

The Chairperson of the Association shall convene the Board meeting.

The members of the Executive Board do not receive any remuneration for their work or per diem as compensation for their time spent to attend the meeting. However, as the incentive to

attend, they may receive continuous professional education credit points for each 3 meetings which they attend.

However, the Charter does not cover the following issues:

- how many days in advance the Executive board members should be informed about the meeting?
- that the agenda and draft resolutions should be attached;
- that a meeting can be convened electronically by sending an email to each member of the Executive Board – provided that automatic confirmation that the email has been read is received;
- who can convene the Executive Board in case of absence or illness of the Chairperson of the Association?
- whether the meeting may be held remotely?
- whether the members of the Executive Council are remunerated or if they can receive a per diem as compensation for their time?
- whether the members of the Executive Council who arrive from outside Tbilisi are entitled to reimbursement for their travel expenses if they attend the meeting in person?

Therefore, it is recommended to address these regulatory gaps. More detailed recommendations how to improve the functioning of the Executive Board can be found in point I.9 of the Annex 1.

The Executive Board shall be duly constituted if attended by more than half of its members.

According to Article 26 section 2 of the Law of Georgia on Lawyers, it shall be mandatory for members of the Executive Board to attend its sessions. Also, according to Article 14 section 4 of the Charter, it is mandatory for the Executive Board members to attend the meeting.

However, neither the Law of Georgia on Lawyers nor the Charter provides for consequences of an absence. It is not enough to write that attendance is mandatory because the duty to attend may be breached by the Executive Board members which eventually – in the worst case – may lead to paralysation of that body. Therefore, it is recommended either not to require a quorum at all (delete Article 26 section 6 of the Law of Georgia on Lawyers) or introduce any sanctions for absence (the Executive Board members shall receive per diem for each meeting but should not receive per diem in case of absence).

According to Article 26 section 6 second sentence of the Law of Georgia on Lawyers, the decisions shall be made based on a simple majority of members present and voting, unless otherwise provided for by the legislation of Georgia. In the case of equal votes, the chairperson of the meeting shall give the casting vote.

According to Article 14 section 5 of the Charter, the decisions are made by the simple majority of the members, if there are no other requests mandated under the Law of Georgia on Lawyers and this Charter. In case of a split of votes the Chairperson's casting vote shall be decisive.

The Charter contradicts the Law of Georgia on Lawyers, because according to Article 26 section 6 of the Law of Georgia on Lawyers exceptions can be provided for by the legislation of Georgia, but according to Article 14 section 5 of the Charter exceptions can be provided either by the Law of Georgia on Lawyers or by the Charter. The Charter is not mentioned in Article 26 section 6 second sentence of the Law of Georgia on Lawyers. Therefore, the Charter broadens the exception and changes the provision of the Law of Georgia on Lawyers. The Charter may not change provisions of the Law of Georgia on Lawyers because the Charter is a subordinate source of law.



According to Article 26 section 7 of the Law of Georgia on Lawyers, the Executive Board has 20 competences, but Article 26 section 7 letter t) provides that the Executive Board shall also exercise other powers provided for by the Charter of the Association.

Therefore, the Law of Georgia on Lawyers allows that the Charter may provide for additional competences, which are not listed in Article 26 section 7 of the Law of Georgia on Lawyers. In such situation the list of competences in the Charter may be longer than the list of competences in the Law of Georgia on Lawyers.

The functions of the Executive Board are in compliance with European practice.

### **III.3.3. President**

The General Meeting of the Bar Association shall elect a chairperson from among the members of the Bar Association.

As a rule, the General Meeting of the Bar Association shall decide by a simple majority of the members present and voting, unless otherwise provided for by the legislation of Georgia. Simple majority means that the candidate who receives more votes than the other candidates shall be considered elected.

Further details of election procedure are specified in the Charter. According to Article 12 section 2b of the Charter, the Chairperson of the Association shall be elected in a secret ballot by a majority of attendees. A question arises whether “*a simple majority of the members present and voting*” (as required by Article 24 section 2 of the Law of Georgia on Lawyers) means the same as “*majority of attendees*” (as required by Article 12 section 2b of the Charter)? Of course, an advocate may be present (therefore counted as an attendee) but not vote. Neither Article 24 section 2 of the Law of Georgia on Lawyers nor Article 12 section 2b of the Charter define which moment is decisive: is it an attendance list prepared at the beginning of the meeting to verify whether the quorum requirements are met or the number of advocates who are present during the elections of the President? If the latter applies, then is it the number of advocates present at the beginning of the vote or after the vote has finished is decisive? The provisions of the Law of Georgia on Lawyers and of the Charter do not provide answers to these questions.

The words: “*members present and voting*” do not necessarily contradict with the words: “*majority of attendees*”. However, their meaning is not clear because it is not stated which moment is decisive. The words: “*members present and voting*” mean members present and participating in a given vote (i.e., members who votes for, against or abstained – but without members, who were present, but did not vote during particular vote). The word “*attendees*” means members who are present in the room – no matter, whether they vote or not.

It is a common European practice to accept a fiction that the number of advocates registered as present at the attendance list prepared at the beginning of the meeting verify that the quorum requirements are met and remain unchanged till the end of the General Assembly. This happens even though everybody knows that the actual number of advocates who are present is getting lower with passage of meeting. For this reason, every advocate at every moment shall have the right to demand (in a way of a formal motion) to verify how many persons are present – especially when there are doubts whether the quorum requirement is still met.

However, to avoid any doubt terminology should be unified. Therefore, it is recommended to amend Article 24 section 2 of the Law of Georgia on Lawyers and replace the words “*the members present and voting, unless otherwise provided for by the legislation of Georgia*” with the word “*attendees*”.

The General Meeting of the Bar Association shall elect a chairperson for four years.

The competences of the President are described in Article 17 section 3, 5 and 6 and in Article 18 of the Law of Georgia on Lawyers.

According to Article 27 section 3 of the Law of Georgia on Lawyers, the chairperson of the Bar Association may not practise the profession of lawyer during the period of his/her tenure. This prohibition is repeated in art 17 section 4 of the Charter.

The Chairperson of the Bar should be allowed to practice because according to European standards the Chairperson of the Bar is not prohibited from pursuing legal practice. In 2015, the CCBE carried out a survey on this question which showed that in none of the responding countries (23) the President was prohibited from practicing. Contrary, for example according to paragraph 98 section 3 of the By-Law of the Law Society of England and Wales the compensation for loss of income may be payable to the law office, in which the Chairperson works, or to the Chairperson directly. This example clearly shows that in United Kingdom the Chairperson remains as a partner in his or her law office and is allowed to practice. The Law Society of England and Wales may pay directly to the law firm in which the Chairperson works a compensation for the loss of income because each Chairperson of the Bar is so busy with different duties in the Bar that he or she has very little time for his or her clients. If the Chairperson has not had these duties in the Bar, then he or she would have devoted more time for work with clients and would have earned money as an advocate. That is why payment of such compensation is justified. The same system of compensation is applied in Denmark.

Therefore, it is recommended to amend Article 27 section 3 of the Law of Georgia on Lawyers and art 17 section 4 of the Charter so that the Chairperson of the Bar (the President) should be allowed to practice.

According to Article 27 section 3 of the Law of Georgia on Lawyers, the chairperson of the Bar Association shall receive remuneration from the funds of the Bar Association and may not practise the profession of lawyer during the period of his/her tenure.

However, the Executive Board has decided that the President of the Bar receives no remuneration at all. This is contrary to the wording of Article 27 section 3 of the Law of Georgia on Lawyers and may be challenged by the President.

Therefore, it is recommended that the Executive Council should amend its resolution on remuneration of the President and fix the salary of the President. The President is entitled to receive remuneration since the day when he has been elected and the deprivation of salary in situation in which he may not practice as advocate has violated the law.

Functions of the Chairperson of the Bar comply with European standards. The Chairperson of the Bar should not be involved in the disciplinary proceedings.

### **III.3.4. Disciplinary bodies**

According to Article 28 of the Law of Georgia on Lawyers the Ethics Commission shall decide on the disciplinary liability of the lawyer.

Therefore, the Ethics Commission is a body of the Bar which is responsible for disciplinary proceedings against lawyers.

The General Meeting of the Bar Association shall elect the members of the Ethics Commission for four years in the manner established by the Charter of the Association.

Candidates who obtain more votes than the other candidates shall be deemed elected as members of the Ethics Commission.

The Ethics Commission shall comprise five disciplinary collegiums. Each disciplinary collegium shall be comprised of three members of the Ethics Commission.

The General Meeting of the Bar Association shall elect the members of the Ethics Commission for four years.

Probably all European Bars have ethic or deontology committees, but the function of ethic or deontology committees is different: they are responsible for the interpretation of ethical codes and give guidance and recommendation in deontological issues.

Bodies responsible for disciplinary proceedings against lawyers are named: the Disciplinary Board ("Disziplinartrat") in Austria, the Disciplinary Commission in Belarus, the Disciplinary Council of Appeal in Belgium, the Disciplinary Tribunal in Bulgaria, the Disciplinary Board in Cyprus, the Disciplinary Commission in the Czech Republic, the Disciplinary Board ("Advokatnævnet") in Denmark, the Court of Ethics in Estonia, the Disciplinary Board in Finland, the Disciplinary Council in France, the Disciplinary Courts in Germany, the Disciplinary Boards in Greece, the Disciplinary Tribunal in Hungary, the Disciplinary Committee in Iceland, the Complaints and Client Relations section in Ireland, the Disciplinary District Council in Italy, the Disciplinary Commission in Latvia, the Superior Court of Liechtenstein in Liechtenstein, the Court of Honour of Advocates in Lithuania, the Disciplinary and Administrative Board in Luxembourg, the Commission for the Administration of Justice in Malta, the Commission for Ethics and Discipline in the Republic of The Republic of Moldova, the Council of Discipline in the Netherlands, the Disciplinary Committee in Norway, the Disciplinary Court in Poland, the District Council in Portugal, the Disciplinary Commission in Romania, the Disciplinary Commission in Slovakia, the Disciplinary Committee of First Instance in Slovenia, the Disciplinary Board in Spain, the Disciplinary Committee in Sweden, the Higher Qualification and Disciplinary Commission of the Bar in Ukraine, the Solicitors Disciplinary Tribunal in United Kingdom.

Therefore, only in the Georgian Bar the name of the body which is responsible for the disciplinary proceedings against lawyers is Ethics Commission.

It is recommended to change the system of disciplinary proceedings against lawyers in such a way, that the duties of the processing collegium should be performed by Disciplinary prosecutors and the duties of the hearing collegiums should be performed by the Disciplinary Tribunals. Body which accuses lawyers (in Georgia: the processing collegium) should be separated from the body which has the power to sanction lawyers (in Georgia: the hearing collegium) to safeguard accused lawyer's right to a fair trial.

The provisions of the Code of Ethics are not compatible with the provisions of the Law of Georgia on Lawyers. The Code of Ethics, as subordinate source of law, may not alter the provisions of an act of the Parliament.

With the new opportunities created within the Bar and Bench formula, the Georgian Bar should encourage judges to report unethical behaviour in courtroom to the Ethics Commission.

Interviews with stakeholders have shown that many clients of Georgian advocates are completely unaware of ethical regulations and restrictions, which are in force. For this reason, such clients sometimes exert pressure on advocates to breach the Code of Ethics, for example to continue to act despite a conflict of interest. For this reason, it is recommended that the Ethics Committee should also undertake action to raise awareness about key ethical regulations (such as conflict of interest) among clients.

### **III.3.5. Other bodies (committees, commissions, etc.), professional unions of lawyers**

There are no regional bodies in the Georgian Bar. However, the Bar operates four regional representative offices in major Georgian cities: Batumi, Kutaisi, Telavi and Zugdidi. Apart from

the President, the Executive Council and the disciplinary bodies the following bodies exist in the internal structure of the Georgian Bar:

- the Audit Commission (see Article 29 of the Law of Georgia on Lawyers);
- the Training Centre for Lawyers (see Article 23 section 3 of the Law of Georgia on Lawyers).<sup>8</sup>

The Audit Commission is monitoring the use of financial resources or other property in compliance with the statutory objectives by the chairperson of the Bar Association, by the Executive Board, the executive secretary and by persons appointed (approved) by them (Article 29 section 1 of the Law of Georgia on Lawyers).

The Training Centre for Lawyers shall carry out the professional training of lawyers (Article 23 section 3 of the Law of Georgia on Lawyers).

As no shortcomings in the functioning of the Audit Commission and the Training Centre for Lawyers have been identified there are no recommendations for their further improvement.

### **III.4. Interns and the Professional Adaptation Programme**

The regulation on an intern of an advocate and of an assistant of an advocate is provided in Chapter IV (Articles 16 and 17) of the Law on Lawyers of Georgia.

The delegation in Article 16 section 1 of the Law of Georgia on Lawyers, which gives the Executive Board of the Bar Association power to define details of the Professional Adaptation Programme including rules how an intern shall be selected is contrary to European standards because an applicant who wants to be an intern is not yet a member of the Bar. The Executive Board of the Bar Association may not have any law-making authority concerning the legal situation of a person who is not yet a member of the Bar. Rules how an intern shall be selected must be contained in state law which is binding for all citizens of Georgia.

In Article 16 section 1 of the Law of Georgia on Lawyers the following words: “*the right to free choice of the internship supervising lawyer by the intern is guaranteed*” should be deleted because if many interns choose the same supervising lawyer, then such lawyer may be overwhelmed and may not have enough time to prepare his or her interns.

The right on an intern stipulated in Article 16 section 3 of the Law of Georgia on lawyers to exercise the authority of an advocate based on his/her instructions is in force starting from the 1st day of the Professional Adaptation Programme. According to European standards the right of an intern to substitute an advocate in court is granted after some time since the beginning of the Professional Adaptation Programme, but not from the first day, when an intern is not yet ready. It is also common that an intern’s right to substitute an advocate in court is limited. For example, an intern may not substitute an advocate in the Constitutional Tribunal or in the Supreme Court. Detailed recommendations on amending the Article 16 can be found in point 12 of the Annex 1.

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<sup>8</sup> The status of the Training Centre for Lawyers is unclear: if it is not a separate body of the Bar then it should not be mentioned in article 23 section 3.

## **III.5. Interaction with other public authorities and organisations related to the profession of lawyer in the justice system**

### **III.5.1. Interaction with public authorities**

The Law of Georgia on Lawyers does not regulate the role of the Minister of Justice in supervising the Bar. Interviews with stakeholders have shown that the co-operation between the Georgian Bar and Ministry of Justice is good.

In October 2020 the first meeting of the Bar and Bench Initiative has taken place. The purpose of the Advisory Board of Legal Professions (Bar and Bench) is to support raising quality of justice in criminal, administrative, and civil proceedings by organising regular meetings between legal professions (judges, prosecutors, and lawyers), discussing problems, exchanging information, developing uniform practices, and developing recommendations and legislation. The Advisory Board members comprise those incumbent judges, lawyers, and prosecutors that are part of the Thematic Sections. An observer member of the Advisory Board may also be a representative of another legal profession and academic-scientific circles. The Advisory Board supports strengthening of the legal profession, formation between representatives of different legal professions of mutual respect, healthy collegial attitudes, common ethical principles, free exchange of views, as well as increase in the prestige of and public confidence in the justice system, and the competence of professionals in the justice system. The Advisory Board of Legal Professions consists of the Steering Committee, Thematic Sections, and the Secretariat. The Steering Committee defines the main principles and directions of the Advisory Board activities and oversees its work. The Steering Committee consists of the Chairperson of the Supreme Court of Georgia, the Chairperson of the Georgian Bar Association, and the Prosecutor General of Georgia. Thematic Councils are set up in four areas within the Advisory Board: criminal, administrative, civil law, and deontology.

### **III.5.2. Interaction with free legal aid institutions**

The Legal Aid Council is not the body of the Bar but the Executive Council of the Georgian Bar Association elects three members of The Legal Aid Council (see Article 10 section 1 of the Law of Georgia on Legal Aid,<sup>9</sup> Article 26 section 7 and Article 26<sup>1</sup> of the Law of Georgia on Lawyers). The Legal Aid Council is established to ensure administration of the Legal Aid Unit, efficient performance of its functions, and independence and transparency of the Unit (Article 10 section 1 of the Law of Georgia on Legal Aid) are selected by the Executive Council of Georgian Bar Association.

Interviews with stakeholders have shown that the co-operation between the Georgian Bar and the Legal Aid Council is good. A collegiate body—the Legal Aid Council has been established to ensure administration of the Legal Aid Unit, efficient performance of its functions and independence and transparency of the 16 Legal Aid Units. The Council is comprised of nine members. Three members are selected by the Executive Council of Georgian Bar Association and three members – by the Public Defender of Georgia; one member is selected by the Legal Aid Bureaus from the lawyers of the Bureaus; one member is nominated by the Minister of Justice of Georgia from the employees of the Ministry of Justice of Georgia and one member is nominated by the High Council of Justice of Georgia from the non-judge members of the High Council of Justice. Currently there are 160 advocates employed by the Legal Aid Units. They are members of the Bar, but they are prohibited from practice because they have a labour contract with the Legal Aid Unit. There are 30 to 40 candidates for each position of a Legal Aid

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<sup>9</sup> Legislative Herald of Georgia 02.07.2007 r no 24, document number 4955.

Lawyer therefore there is no danger of shortage of candidates. Because the number of candidates is bigger than number of places, a transparent contest is organised.

### **III.5.3. Interaction with professional unions of lawyers**

Many associations of lawyers act in Georgia. During Council of Europe project two of them have been interviewed.

Association of Law Firms. The Purpose of the Association is to protect corporate rights and interests of the law firms. Currently 27 Law Offices are members of this Association.

Georgian Young Lawyers' Association. The primary objectives of the Association are to raise legal awareness of the public and establish the rule of law, to develop the legislative base of the civil society and legal state, to protect human rights, dignity, and freedom, to develop the legal profession and establish the standards of professional ethics. Any person up to 40 years old with the legal education or a student at a law school may join the Association. Georgian Young Lawyers' Association is active in pro bono litigation. It also runs programmes supporting democratic institutions and human rights.

It must be noted that establishing the standards of professional ethics for advocates who are members of the Bar is the sole competence of the Georgian Bar. However, Georgian Young Lawyers' Association may establish standards for their members.

### **III.5.4 Gender Situation**

The gender equality situation among Georgian advocates is good. There are 4858 practicing lawyers in Georgia, 2332 of them are female (48 %). The Executive Board consists of 12 lawyers, 3 of them (25%) are female. There is no commission for female lawyers.

### **III.6. Recommendations and conclusions**

In conclusion, the internal structure of the Georgian Bar Association does comply with European standards, but there are some obstacles to effective functioning of the Georgian Bar are:

- problems with voting and discussion during the General Assembly caused by too large number of participants,
- the fact that interns, who are not members of the Bar, are supposed to be bound by regulations adopted solely by the Bar,
- difficulties in uniform interpretation of the Code of Ethics caused by discrepancies between the Law on Lawyers and the Code of Ethics, which is not fully aligned to CCBE Model Code standards.

Therefore, it is recommended to:

1. Amend Article 23 section 1 of the Law of Georgia on Lawyers in such a way that the list of bodies is complete and includes:
  - a) the General Meeting of the Bar Association,
  - b) the Executive Board,
  - c) the Ethics Commission,
  - d) the Audit Commission,

- e) the Training Centre for Lawyers,
  - f) the Disciplinary Prosecutor and the Disciplinary Court (see remarks in part I.3.d and other recommendation no 23),
  - g) the President (the Chairperson) of the Bar.
2. Avoid repetition in the Charter of the Georgian Bar Association as amended on 23 December 2018 what already is written in the Law of Georgia on Lawyers of 20 June 2001, delete provisions of the Charter that contradicts the Law on Lawyers.
  3. Lower the number of participants of the General Assembly of the Bar to maximum 200 advocates or interns by introducing a system in which the General Assembly of the Bar is composed of delegates previously elected in such a way that there is 1 delegate for 50 advocates or interns.
  4. Allow voting by proxy based on power of attorney in the General Assembly.
  5. Instead of stamping each voting card by representative of each candidate for the President of the Bar hire and use electronic system for calculation of votes during elections and all other resolutions adopted by the General Assembly.
  6. Adopt detailed election procedures.
  7. Improve provisions of the Law on Lawyers and the Charter regulating the work of the General Assembly and Executive Board.
  8. Amend Article 27 section 3 of the Law of Georgia on Lawyers that prohibits the President of the Georgian Bar Association to practice. The art 17 section 4 of the Charter should be amended accordingly.
  9. Change the system of disciplinary proceedings against lawyers in such a way, that the duties of the processing collegium should be performed by Disciplinary prosecutors and the duties of the hearing collegiums should be performed by the Disciplinary Tribunals.
  10. Separate the body which accuses advocates (the processing collegium) from the body which has the power to sanction advocates (the hearing collegium) in order to safeguard accused advocates' right for a fair trial.
  11. Adjust both the Law of Georgia on lawyers and the Code of Ethics to CCBE Model Code of Conduct.

## **IV. REPUBLIC OF MOLDOVA**

### **IV.1. National legal framework**

The Legal profession in the Republic of Moldova is regulated by:

1. the Law on Advocacy of 19 July 2002 (Official Gazette N 1260-XV) with the amendments of 14 June 2021 thereto;
2. the Statute of the Profession of a lawyer, adopted on 29 January 2011, by the Union of Lawyers of the Republic of Moldova [Official Gazette of 8 April 2011 no 54-57].

Other rules and regulations related to bodies of the bar, accreditation, and education of advocates; provision of free legal aid can be found in the following acts:

1. the Regulation on the organisation and functioning of the Union of Lawyers of the Republic of Moldova adopted on 27 May 2016 by a resolution of the Bar Council,
2. the Regulation on the Establishment and Operation of the Lawyers Training Centre adopted by a resolution of the Bar Council on the basis of Article 52<sup>2</sup> section 2 of the Statute.
3. the Regulation of the National Council on State Guaranteed Legal Aid approved by the Minister of Justice on 24 January 2008 [the Official Gazette of 1<sup>st</sup> of February 2008 no 21-24 article no 49],
4. the Code of Ethics for Advocates of the Bar of the Republic of Moldova passed on 20 December 2002 by a resolution of the Congress of Advocates.

The Law on Advocacy regulates the advocates' profession, admission to the Bar, licensing of the advocate's practice, organisational forms of advocate's practice, the Bar (association of advocates), and bodies of the Bar.

The Statute of the Profession of a lawyer regulates lawyers, admission to the profession, lawyer's license, forms of organisation of lawyer activity, lawyers' association, self-administrative bodies of lawyers' association, guarantees of the lawyer profession, rights and obligations of lawyers, disciplinary liability of lawyers, remuneration of lawyers' activity, insurance and taxation and relations with similar organisations in other countries and with international organisations.

### **IV.2. Organisational structure of the bar association**

According to Article 35 of the Law on Advocacy, the Association of Advocates is a body of advocates' self-governance which unites all advocates included in the List of Advocates. The Association of Advocates is a legal entity, shall have its own property and budget.

According to Article 1 of the Statute, the profession of lawyer is established under the conditions of the Law on Advocacy no. 1260 -XV of 19.07.2002, published in the Official Gazette of the Republic of Moldova no. 159/582 of 04.09.2010.

According to law and existing practice the Moldovan Bar is self-regulatory as it establishes its internal law which is published on the Bar website.

The governing organs of the Association of Advocates are:

- a) the Congress,
- b) the Council of the Union of Advocates,
- c) the Chairperson of the Union of Advocates,
- d) the Secretary-General of the Union of Advocates.



The following units are established within the Bar:

- a) the Commission for licensing the legal profession,
- b) the Commission for Ethics and Discipline,
- c) the Audit Commission,
- d) the Secretariat,
- e) Lawyers' Training Centre.

To strengthen the democratic character of elections for all functions in the Bar the following general rule may be added: "members of all bodies of the Bar shall be elected by secret ballot with an unlimited number of candidates."

#### **IV.2.1. General meeting/Congress/Conference**

The Congress shall be the highest body of the Union of Advocates.

According to Article 36 section 1 of the Law on Advocacy, the Congress shall be made up of all advocates of the Republic of Moldova.

standard of representation at the Congress shall be 1:5 According to Article 36 section 2 of the Law on Advocacy, a regular session of the Congress shall be called by the Council of the Association of Advocates once in a year.

According to Article 41 section 4 of the Statute, the Congress meets annually in ordinary session, being convened by the Council of the Bar.

The Statute, which is a subordinate source of law, should not repeat the provisions of an act of the Parliament because when such an act is amended, while the Statute is not, problems may arise. Therefore, the Statute should only contain more detailed regulation, supplementing the regulation of the Law on Advocacy. It is recommended to review all provisions of the Statute and delete provisions which merely repeat the provisions of the Law on Advocacy. Other examples of redundant provisions of the Statute are listed in point II. 1 of the Annex 1.

As it has been already mentioned above, the Congress is dominated by advocates from Chisinau who have majority to pass all resolutions. To avoid the risk of adopting resolutions which are convenient for advocates working in capital city, but not for advocates working in regions, the double majority vote system may be introduced. In a double majority vote system, a resolution is passed when a double majority is reached, i.e., the majority of Congress votes for and the majority of collegiums of advocates (regional bars) votes. In practice a double majority vote system in the Bar of the Republic of Moldova means that each resolution must at the same time be supported by at least 3 out of 4 regional bars of advocates and by a majority of Congress.

Therefore, it is recommended to conduct a study on whether outvoting advocates from regions by advocates from Chisinau creates any problems. If it is a problem indeed, then the recommended double majority vote system may be applicable for the Congress.

The Congress shall be qualified to take decisions if attended by 1/3 of its members.

The interviews with stakeholders have shown that the lack of quorum at past Congresses when quorum was 2/3 was the biggest obstacle in the functioning of the Moldovan Bar. We understand that the recent amendments to the Law on Advocacy have addressed those concerns.

According to Article 41 section 9 of the Statute, the works of the congress are led by the President of the Bar and the presidium Congress consisting of the deans of the bars.

Unfortunately, this is not a good model because the Congress elects the President of the Bar. Any chairperson of the Congress has a strong influence over what is happening during such Congress. When a chairperson of the Congress is at the same time running as a candidate for the President of the Bar, then he or she is in a conflict-of-interest situation. The recent amendments to the Law on Advocacy have addressed this issue. It is recommended that the statute is amended accordingly.

It is recommended that the statute is amended accordingly.

Other aspects of the functioning of the Congress of Advocates comply with European standards and practice.

## **IV.2.2. Council**

The Council of the Bar shall be a competent body which represents advocates of the country and facilitates the continuous work of the Bar.

The Council of the Bar is the representative and deliberative body of the lawyers in the country and ensures the permanent activity of the Bar.

The term of office of a member of the Council of the Union of Advocates shall be 4 years.

According to Article 38 section 2 of the Law on Advocacy, the Council of the Bar shall comprise of the Chairperson of the Bar, deans of regional bars and advocates delegated by regional bars in accordance with the standard of representation established by the Statute.

According to Article 43 section 2 of the Statute, the Council of the Bar shall consist of the President of the Bar, deans of regional bars and advocates who have at least five years of professional experience and were delegated by regional bars according to the norm of representation of 1: 200 (one delegate for two hundred lawyers).

The Statute introduces the requirement of at least five years professional experience which must be fulfilled by a candidate for a member of the Bar Council. The Law on Advocacy does not provide for such requirement. Consequently, the Statute, which is a subordinate source of law, alters the provisions of the Law on Advocacy. The recent amendments to the Law on Advocacy have addressed this issue.

The number of members of the Bar Council depends on the overall number of advocates (one delegate for two hundred lawyers). Therefore, when the overall number of advocates grows then the number of members of the Bar Council will grow also. A time will come when the number of members of the Bar Council will become too large.

To solve this problem, it is recommended that the number of members of the Council is permanently fixed instead of having the norm of representation 1 member of the Bar Council for 200 advocates.

The interviews with the stakeholders have shown that different bodies of the Bar the Republic of Moldova implement their own policy. Therefore, it is recommended to give the elected President the tools so that he or she can effectively lead the Bar. Allegedly, there is a need to strengthen the positions of the President of the Bar as a leader responsible for organisation of work of all other Bar bodies. Bar bodies should not compete over who has more influence, but instead should rather co-operate as one team to reach the aims stipulated by the General Assembly.

Therefore, it is recommended to further examine the needs for strengthening the competencies of the President, and if justified to allow the President of the Bar to appoint two Deputy Presidents who would be members of the Council. Detailed recommendations can be found in point II.7 of the Annex 1.

This way the composition of the Council will be balanced: 3 members will represent the Presidency of the Bar 3 members will represent the largest Chisinau Collegium of Advocates and 3 members will represent the other three regional Collegiums of Advocates. None of these three groups will have the majority therefore they will have to reach a compromise.

According to Article 43 section 5 of the Statute, in exceptional situations, at the request of at least 1/3 of the members of the Council or on his/her own initiative, the President of the Bar shall convene an extraordinary meeting of the Council within 5 days from the date of the request or from the date of the event. supporting.

The right to request an extraordinary meeting of the Bar Council should be given to the members of the Bar Council but not to 1/3 of all advocates. A fraction of all advocates shall have the right to convene an extraordinary Congress, but not an extraordinary meeting of the Bar Council. The recent amendments to the Law on Advocacy have addressed this issue.

It is also recommended that the Statute should provide for the event of failure by the President of the Bar to convene the meeting of the Bar Council, thus complying with the best practices of the Council of Europe member States. Detailed recommendations can be found in point II.9 of the Annex 1.5. From time to time the Bar Council adopts resolutions on personal and highly sensitive issues. The privacy of advocates, who are concerned with the Bar Council resolutions, must be protected. Therefore, the materials to be examined by the members of the Bar Council should not be publicly accessible in the public domain - on the official website of the Council of the Bar. Materials to be examined by the members of the Bar Council can either be put on the Extranet of the Bar (if access to Extranet is password protected) or uploaded elsewhere to a password protected cloud. Detailed recommendations can be found in point II.10 of the Annex 1.

According to Article 38 section 8 of the Law on Advocacy, the Bar Council shall take decisions by a majority of votes of the present members. According to Article 43 section 6 of the Statute, the Bar Council adopts decisions with the vote of the majority of the members. The above provisions are contradictory. For this reason, it is recommended to adjust the Article 43 section 6 of the Statute to avoid such conflict.

The interviews with stakeholders have shown that sometimes there are lengthy discussions during meetings of the Council of the Bar, which does not always lead to conclusions.

Therefore, it is recommended to adopt a regulation of the Council with a detailed procedure of managing meetings of the Council. Detailed recommendations can be found in point II.12 of the Annex 1.

### **IV.2.3. President**

The elected President of the Bar should have an opportunity to build a team of his or her close co-workers, whom he or she trusts. The President of the Bar should also work hand in hand with members of the Council of the Bar as one team to implement the Long-term Strategy and Annual Plans adopted by Congress.

The interviews with the stakeholders have shown that sometimes different bodies of the Bar of the Republic of Moldova implement their own policy, rival for influence and do not work as one team.

For this reason, there is a need to strengthen the President and give the elected President tools so that he or she can effectively lead the Bar. As an example of such tools, the President might have the right to appoint the Deputy President and the Second Deputy President from Council members or who will automatically become members of the Council of the Bar. This way the President together with the Deputy President and the Second Deputy President will get influence on the works of the Council (3 members out of 9).

Detailed recommendations can be found in point II.13 of the Annex 1.

Other aspects of the functioning of the President of the Bar comply with European standards and practice.

#### **IV.2.4. Disciplinary bodies**

The Commission for Ethics and Discipline shall comprise of 11 advocates with 6 members elected by the Congress from those advocates who have at least 5-year professional experience and 5 members delegated by collegiums advocates.

According to Article 48 section 1 of the Statute, the protection of the honour and prestige of the profession, the observance of the Law, of the Statute of the profession and of the obligatory decisions of the bodies of the profession are entrusted to the Commission for ethics and discipline, this being the only disciplinary court of the Bar.

According to Article 37 a. of the Law on Advocacy, the Congress shall elect and dismiss members of the Commission for Ethics and Discipline.

According to Article 42 a. of the Statute, the Congress shall elect from among its members and dismiss members of the Commission for Ethics and Discipline.

Article 42 a. of the Statute introduces an additional requirement for a candidate for member of the Commission for Ethics and Discipline – i.e., such candidate must be a member of the Congress. The Law on Advocacy does not provide for such requirement. Therefore, it is questionable if the Statute may introduce an additional requirement for a candidate for the member of the Commission for Ethics and Discipline. The provisions of the Law on Advocacy do not delegate to the Congress the competence to establish any additional requirements. Therefore Article 42 a. of the Statute contradicts the Article 37 a. of the Law on Advocacy because it introduces an additional requirement for a candidate for the member of the Commission for Ethics and Discipline. The Statute as a subordinate source of law may not change the provisions of the Law on Advocacy which is an act of the Parliament. For these reasons, it is recommended to adjust the Statute and to remove the words: “from among its members” in Article 42.

According to Article 42 section 1 of the Law on Advocacy, the members of the commissions of the Union of Advocates shall be elected or appointed for 4-year term.

According to Article 46 section 1 of the Statute, the members of the commissions of the Bar Union are elected for a term of 4 years from lawyers who have a professional experience of at least 5 years.

The roles during disciplinary proceedings are not correctly distributed. According to Article 56 section 2 of the Law on Advocacy complaints are examined by the Commission for Ethics and Discipline (acting as an accuser) and disciplinary measures are also imposed by the Commission for Ethics and Discipline acting as a decision-making body (the disciplinary court). This is contrary to the principles of a fair trial. The roles of an accuser (who examines the complaint against an advocate) and the role of a decision-making body (the disciplinary court) must be separated. Therefore, it is recommended to amend the regulations on disciplinary proceedings (Article 56-59 of the Law on Advocacy and Article 59-61 of the Statute) accordingly.

Moreover, the investigation of a complaint during the preliminary stage should not be commissioned to a regional bar, which does not correspond to the best practices of the Council of Europe member States. Therefore, it is recommended to delete the words “or be commissioned to a regional bar” in Article 56 section 2 of the Law on Advocacy.

Other aspects of the functioning of the Commission for Ethics and Discipline comply with European standards and practice.

## **IV.2.5. Regional bodies**

### **i. Regional bars**

According to Article 47 section 1 of the Law on Advocacy, the regional bar shall be set up and operate in accordance with the present Law and only under the auspices of the Association of Advocates.

According to Article 47 section 2 of the Law on Advocacy, the regional bar shall carry out its activities in the jurisdiction of the regional Court of Appeals. The regional bar shall comprise of all advocates of the respective jurisdiction.

According to Article 47 section 4 of the Law on Advocacy, the bodies of the regional bar shall be:

- a) the General Assembly,
- b) the Dean.

The lawmakers ensured that avoidance of establishment of any body (e.g., bars, collegiums) outside of the control of the Bar. According to Article 51 section 1 and 2 of the Statute, the regional bar is established and, according to the Law operates only within the national Bar. It is forbidden to set up a bar and operate them outside the national Bar. The acts of constitution and registration of such bar or collegium of advocates are null and void.

### **ii. General Assembly**

The General Assembly shall comprise of all advocates included in the list of the respective regional bar. The General Assembly shall be convened by a Dean once a year. The General Assembly shall be qualified to take decisions if attended by 1/3 of its members.

According to Article 48 section 5 of the Law on Advocacy, In the absence of the quorum, the Dean, no later than within 10 days, shall set the date of a new meeting. When the General Assembly is called in such manner those present shall be qualified to take decisions (the recent amendments to the Law on Advocacy and in the Statute have addressed the excessive requirement of the quorum for the second meeting).

The General Assembly shall make a decision by majority votes of the attending members.

### **iii. Dean**

The General Assembly shall elect and dismiss the Dean and Deputies of the Dean. The Dean shall be elected for a 4-year term of office with a possibility of re-election for another 4-year term.

In the absence of the Dean or in case of his/her unavailability, his/her duties shall be carried out by the Deputy Dean.

The Dean should not be allowed to perform any functions in any other bodies of the Bar. It is recommended that the Dean should concentrate on his/her responsibilities at the regional level and should not take any additional workload at the national level. More detailed recommendations are provided in point 6 of Part VI: Comparative analysis and the final conclusions,

## **IV.2.6. Other bodies (committees, commissions, etc.), professional unions of lawyers**

Apart from the President, the Council, and the disciplinary bodies the following bodies exist in the internal structure of the Bar of the Republic of Moldova:

- the Secretary General,
- the Commission for Licensing of Advocacy,
- the Audit Commission.

#### i. Secretary General

The Secretary-General shall ensure organisational, administrative, financial and economic activities of the Bar. The Secretary General shall be employed by the Bar Council on the basis of a competition for 5-year term with a possibility of one-time extension for the same term.

The Secretary General shall:

- a) be responsible for financial and economic aspects of the governance of the Bar,
- b) conclude agreements and contracts in the name of the Bar,
- c) manage the budget of the Bar,
- d) organise the development, justification, and presentation to the Congress of a draft of the annual budget of the Bar,
- e) present to the Congress an annual report on the budget implementation of the Bar,
- f) take part without a voting right in sessions of the Congress and meetings of the Bar Council,
- g) after having consulted with the Bar Council, prepare a draft agenda and materials for the Congress and the Bar Council,
- h) hire and manage staff members of the Secretariat,
- i) organise the record keeping of the immovable and other property of the Bar,
- j) on the instruction of the Congress and the Bar Council carry out other duties.

Interviews with the stakeholders have shown that there are concerns that the competences of the Secretary General might be too broad. Taking into consideration the overall number of advocates (around 3 000 in the whole country, out of which around 2 000 practice law) it seems that the internal structure of the Bar of the Republic of Moldova is too complex. There are too many bodies with unclearly separated duties and responsibilities which sometimes creates unnecessary problems. For instance, it was clarified that the functions of the Secretary General are partially overlapping with the duties of the Bar President and of the Council. Therefore, it is recommended to review the necessity of the functions of the Secretary General.

#### ii. Commission for Licensing of Advocacy

According to Article 43 section 1 of the Law on Advocacy, the Commission for Licensing of Advocacy shall comprise of 11 members elected by Congress and regional bars.

The Commission for Licensing of Advocacy shall:

- a) take decisions on admission to the exam;
- b) organise the exam for admission to the internship and the qualification exam;
- c) approve results of the exam for admission to the internship and take decision on admission to the professional internship;
- d) approve results of the qualification exam and take decision on admission to the advocate's practice.

Interviews with the stakeholders have shown that the Commission for Licensing of Advocacy does not function well. Sometimes it happens that the candidates must wait a long time before they get a Licencing Certificate which enables them to practice. The fact that the same group of people is responsible for preparation of questions for the Bar exam, running the Exam itself

and giving results is contradictory to the best practices of the Council of Europe member States.

Interviews conducted with the stakeholders have identified a need to make the final Bar exam even more difficult than it is now. Bar exam should be less theoretical because there is no need to verify the knowledge repeatedly. Instead, the final Bar exam should be more focused on the ability to solve a practical problem described in an examination case.

As an alternative to the carrying a final Bar exam twice per year it is recommended to consider carrying a final Bar exam only once per year for approximately 200 candidates and introduce the following fixed calendar each year:

- entrance examination to become an intern in September each year;
- 18 months training from October till March in the year following the following year;
- final Bar exam in April each year;
- evaluation of Bar exam papers and giving results of Bar exam in May/June each year.

Each year different group of advocates shall be responsible for preparation of questions and cases for the Bar exam, different group of advocates shall be responsible for running the Bar exam and different group of advocates shall be responsible for the evaluation of exams and giving results.

To achieve this, it is recommended that the Congress shall elect 3 different pools of advocates:

- the Questions Pool of 25 distinguished advocates with at least 5 years of professional experience who will be responsible for preparation of questions and cases for the Bar exam,
- the Examination Pool of 25 renowned advocates who will be responsible for running the Bar exam,
- the Evaluation Pool of 25 renowned advocates who will be responsible for the evaluation of exams and giving results.

The Council of the Bar each year 3 months before entrance exam to become an intern and 3 months before the final Bar exam should elect 3 ad hoc commissions:

- the Questions Ad-hoc Commission shall be responsible for preparation of questions and cases for the exams and each year shall consist of 5 members elected among the Questions Pool of 25 distinguished advocates,
- the Examination Ad-hoc Commission shall be responsible for running one nearest entrance exam and one nearest Bar exam and each year shall consist of 5 members elected among the Examination Pool of 25 renowned advocates,
- the Evaluation Ad-hoc Commission shall be responsible for the evaluation and giving results of one nearest entrance exam and one nearest Bar exam and each year shall consist of 5 members elected among the Evaluation Pool of 25 renowned advocates. The Evaluation Ad-hoc Commission shall also be responsible during 12 months after its election for admittance to the Bar judges, prosecutors, and members of other legal professions who according to the law have the right to be admitted to the Bar without taking a Bar Exam. The Evaluation Ad-hoc Commission should meet immediately after the evaluation of examination has finished but, in any case, at least once in each quarter of a year.

The names of members of Ad-hoc Commissions elected to prepare questions, run and evaluate one nearest entrance exam and one nearest Bar exam shall be confidential until the examination is over. The resolutions of the Council of the Bar to elect members of these three ad-hoc commissions should not be published and all possible measures must be taken to avoid

the leak of names of members of these commissions. 5 members of each of the 3 Pools will never be elected as members of the ad-hoc commissions.

Each of the three ad-hoc commissions shall be able to adopt resolutions if at least 3 out of 5 members are present. As an exception, the mandate of members of these three ad-hoc commissions shall expire and shall not be prolonged for the following year even if the Council does not elect new ad-hoc commissions. The same person may be a member of an ad-hoc commission only once. A member of one of the Pools may not be a member of another Pool at the same time. The fee for entry to the list of advocates must be the same for everyone, including former judges or prosecutors. All decisions of these three ad-hoc commissions may be challenged to the Council of the Bar. The decision of the Council of the Bar may be challenged to the administrative court.

### iii. Audit Commission

The Audit Commission shall comprise of 5 advocates who have at least 5-year professional experience delegated by regional bars. The Audit Commission shall exercise control over financial and economic activity of the Bar and shall be accountable to the Congress.

The Audit Commission is composed of 5 lawyers with a professional experience of at least 5 years, delegated by regional bars. The Audit Commission exercises control over the economic and financial activity of the Bar and reports to Congress.

It is recommended that the Statute shall provide more detailed provision explaining how the Audit Commission operates.

### iv. Secretariat

The Secretariat shall be set up to help the bodies of the advocates' self-governance to exercise their functions. Conditions of the recruitment and duties of staff members shall be set forth in the Statute. The number of staff and the concrete functions of the staff of the secretariat shall be established by the Bar Council.

### v. Lawyers' Training Centre

The Lawyer' Training Centre has the following competencies in the process of training lawyers and trainee lawyers:

a) in cooperation with the collegiums of advocates, elaborates, and presents to the Bar Council the General Plan for the continuous training of lawyers and the Initial Training Plan for trainee lawyers, for the period of a 4-year cycle;

b) in cooperation with the Bar Council and the collegiums of advocates, develop appropriate measures for the implementation of the General Plan for Continuing Education for Lawyers and the Initial Training Plan for trainee lawyers;

c) in cooperation with the collegiums of advocates, elaborates, and presents for approval to the Bar Council the annual program with reference to the evaluation and systematic control of the continuous training of lawyers in a coherent and unitary way;

d) in cooperation with the collegiums of advocates, keeps records and quantifies the hours of continuous training of lawyers within the bar and presents the table of records at the end of the calendar year to the Bar Council.

e) exercises the attributions established by the Regulation regarding the establishment and functioning of the Lawyers' Training Centre.

The Lawyers' Training Centre has been established in 2018. Each advocate is obliged to participate in training for at least 16 hours per year.

According to European standards an advocate who has not gathered required number of credits or required number of hours of training commits a disciplinary offence. However, it seems that it is not the case in the Bar of the Republic of Moldova. Therefore, it is



recommended to amend the Code of Ethics for Advocates of the Bar of the Republic of Moldova so that non-fulfilment of duties of continuous professional development is a disciplinary offence for which an advocate may be disciplinary liable.

The duties of the Training Centre should be listed in the Charter of the Training Centre.

At present the Lawyer Training Centre has only 2 employees. Therefore, it is recommended either to raise the budget of the Lawyer Training Centre so that it has enough financial resources to pay outside contributors for preparation of online training programmes or increase employment of the Lawyer's Training Centre.

Online video material should contain at the end a list of questions verifying if a video material has been viewed. Such questions must be answered by an advocate who wishes to get continuous professional development credits.

Interviews conducted with the stakeholders have identified a need to provide extra training for advocates who already have been practising for a longer period. Such courses should update their knowledge about law amendments.

### **IV.3. Interaction with other public authorities and organisations related lawyer professions**

#### **1. Interaction with the public authorities.**

The Moldovan legislation does not provide any outstanding role of the Ministry of Justice in supervising the Bar. Interviews with stakeholders have shown that the co-operation between the Ministry of Justice and Bar is good.

#### **2. The National Council for State Guaranteed Legal Aid**

The National Council for State Guaranteed Legal Aid (hereinafter referred to as the National Council) is a collegial body with the status of a legal entity of public law, founded to administer the process of delivery of state-guaranteed legal aid.

Interviews conducted with the stakeholders have shown that the legal aid systems function well but sometimes there are some shortages of advocates willing to provide legal aid in the regions. Therefore, it is recommended that the Bar should provide some incentives, especially for young advocates, to practice in the region instead of capital city, for example by reduction of subscription (membership fee) to 50 %.

According to some interviewees, the salary of public defenders working in the Legal Aid system, who are prohibited from individual practice and have no other sources of income are being revised very rarely. Allegedly, the salaries have not increased for 12 years (up to 2021). Therefore, it is recommended that the Bar should lobby for a regular increase of the fees of public defenders working in the Legal Aid system.

It is also recommended to develop a system of exchange of information about poor quality of work or disciplinary offences of lawyers between the Commission for Ethics and Discipline and the Legal Aid units.

#### **3. The Women Lawyers' Association and the Young Lawyers' Association.**

Apart from the Bar, there are the following associations of lawyers in the Republic of Moldova:

- the Women Lawyers' Association and,
- the Young Lawyers' Association.

The Women Lawyers' Association has around 100 members and promotes women lawyers' social rights.

The Moldovan Young Lawyers Association is quite active. On 19 May 2017 the Association became a member of the European Young Bar Association.

There are no major problems in the co-operation between these bodies and the Bar were recorded. While the minor cooperation issues are encouraged to be solved through mutual dialogue.

#### **IV.4 Gender Situation**

The interviews with the stakeholder have shown that approximately 45 % of advocates are women. There is no commission for female lawyers.

#### **IV.5. Recommendations and conclusions**

In conclusion, the internal structure of the Bar Association in general complies with European standards, but there is a number of shortcomings. Therefore, some recommendations are provided further for the bar association to improve its compliance with European standards:

1. Different bodies of the Bar have different term of office: members of the Council are elected for 4 years, the President is elected for 2 years, members of the commissions are elected for 4 years, the Secretary General is elected for 5 years, Deans are elected for 4 years. It is a common European practice that members of all bodies of the Bar are elected for the same term of office. It is recommended to unify the term of office of all Bar bodies to be 3-4 years. Detailed recommendations can be found in point II.16 of the Annex 1.:
2. Taking into consideration the overall number of advocates (around 3 000 in the whole country, out of which 2 000 practice law) it seems that the internal structure of the Bar of the Republic of Moldova is too complex. There are too many bodies with not clearly separated duties and responsibilities which sometimes creates unnecessary problems. Therefore, it is recommended to conduct a detailed study of duties and responsibilities of each body of the Bar, eliminate any overlapping duties and consider liquidation of some of the bodies.
3. It is a common European practice that the President of the Bar, who has won the elections, is supported by the majority of delegates to the Congress and works hand in hand with members of the Council of the Bar as one team in order to implement the Long-term Strategy and Annual Plans adopted by Congress. Different bodies of the Bar should not implement their own policy but should rather co-operate with each other.

The interviews conducted with the stakeholders have identified some important problems that do not concern the structure of the bar but should also be mentioned:

- Problem with the non-obligatory insurance of an advocate. According to Article 61 section 1 of the Law on Advocacy “for the purpose to compensate material damage caused in the course of discharging of professional duties, an advocate shall be entitled to conclude in accordance with law a contract of civil liability insurance.” However according to European standards insurance covering civil liability of an advocate is obligatory. Therefore, it is recommended to introduce an obligatory insurance of civil liability of advocates and amend Article 61 section 1 of the Law on Advocacy accordingly.
- Problem of representation of parties in courtroom by unlicensed advocates. To solve this problem, it is recommended to promote online list of licensed advocates among potential clients. The bar should run a media campaign encouraging a client to verify

online whether their lawyer is a licensed advocate. The register of interns, who may appear in court, should also be available online.

- Problem of a deliberate procrastination of proceedings in court, especially in criminal cases when a limit of a maximum one-year detention time is approaching. However, it is difficult to prove that an advocate is not ill when he or she shows a sick leave issued by a physician. Such situation delays court proceedings. Therefore, it is recommended to:
  - Amend the Code of Ethics for Advocates of the Bar of the Republic of Moldova so that a no-show on a hearing in court constitutes a disciplinary offence and entitles a client to liquidated damages, unless advocate can prove that special circumstances have made it not possible to find a substitute (e. g. illness night before a hearing etc.).
  - Amend a code of proceedings in civil and commercial courts in such a way that an advocate is obliged to find a substitute who will be present at a hearing when an advocate cannot be present unless advocate is able to prove that special circumstances have made it not possible to find a substitute (e. g. illness night before a hearing etc.).

## V. UKRAINE

### V.1. National legal framework

The legal profession in Ukraine is regulated by:

1. Article 131<sup>2</sup> of the Constitution of Ukraine (which guarantees the independence of the bar);
2. the Law of Ukraine on the Bar and Practice of Law (Bulletin of the Verkhovna Rada 2013 no 27 item 282 with amendments);
3. the Statute of the Ukrainian National Bar Association (Article 45 section 5 of the Law of Ukraine on the Bar and Practice of Law).

The Law of Ukraine on the Bar and Practice of Law regulates the acquisition of the right to practice law, organisational forms of practice of law, advocate's rights and duties, guarantees of practice of law, legal services agreement, the suspension and termination of the right to practice law, advocates' disciplinary liability, advocates' self-government and practice of law in Ukraine by advocates from foreign states.

The Statute of the Ukrainian National Bar Association regulates goals and objectives of the Ukrainian National Bar Association, its legal status, the rights and obligations of its members, the system of the Bar's self-governance, bodies of the Bar, assets of the Bar, Bar's accounting and reporting and reorganisation and liquidation of the Bar.

Other regulations are:

1. the Procedure for the nomination and election of delegates to the congress of advocates of Ukraine (resolution of the Bar Council of Ukraine adopted on the basis of Article 54 section 3 of the Law of Ukraine on the Bar and Practice of Law);
2. the Regulation on the Bar Council of Ukraine (resolution of the congress of advocates of Ukraine adopted on the basis of Article 54 section 7.4 and Article 55 section 1 of the Law of Ukraine on the Bar and Practice of Law);
3. the Regulation on Representative Offices of Ukrainian National Bar Association (resolution no 17 of the Bar Council adopted on 4 July 2017, amended by resolution no 159 adopted on 17 December 2015);
4. the Regulation on the Higher Audit Commission of the Bar (resolution of the congress of advocates of Ukraine adopted on the basis of Article 54 section 7.4 of the Law of Ukraine on the Bar and Practice of Law);
5. the Regulation on the Qualification and Disciplinary Commission of the Bar (resolution of the Congress of Advocates of Ukraine on 9 June 2017);
6. the Rules of the Higher Qualification and Disciplinary Commission of the Bar (resolution no 78 of the Bar Council of Ukraine adopted on 5 July 2014 with later amendments);
7. the procedure for the nomination and election of delegates to the conference of advocates of the region (resolution of the Bar Council of Ukraine adopted on the basis of Article 47 section 1 of the Law of Ukraine on the Bar and Practice of Law);
8. the Rules of Professional Conduct (adopted by the Congress of Advocates of Ukraine on 17 November 2012).

## **V.2. Organisational structure of the bar association**

Organisational forms of advocates' self-government are as follows: the conference of advocates of the region (in the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), the regional bar council (in the Autonomous Republic of Crimea, region, the cities of Kyiv and Sevastopol), the Bar Council of Ukraine, and the congress of advocates of Ukraine.

Therefore, the internal structure of the Ukrainian Bar is divided into regional and national level. The structure of the bodies is the same at the national and at the regional levels:

1. supreme bodies (the congress of advocates of Ukraine and the conference of advocates of the region);
2. executive bodies (the Bar Council of Ukraine and the Regional Bar Council);
3. Presidency (the Chairperson of the Bar Council of Ukraine and the Chairperson of the Regional Bar Council);
4. audit bodies (the Higher Audit Commission of the Bar and the regional bar audit commission);
5. disciplinary bodies (The Higher Qualification and Disciplinary Commission of the Bar and the qualification and disciplinary commissions of the bar).

The non-individual resolutions of the Bar bodies are published on UNBA website therefore the actions of the Bar are transparent according to European standards.

### **V.2.1. Congress**

The Congress of advocates of Ukraine is the supreme body of advocates' self-government of Ukraine. The congress of advocates of Ukraine shall be composed of the delegates elected by the conferences of advocates of the regions by a relative majority of votes of the delegates attending the conference. The representational quota, the procedure for the nomination and election of delegates to the congress of advocates of Ukraine shall be determined by the Bar Council of Ukraine.

The Congress of advocates of Ukraine shall be convened by the Bar Council of Ukraine no less than once every three years. The congress of advocates of Ukraine shall be convened within sixty days upon the initiative of the Bar Council of Ukraine or upon the demand of no less than one-tenth of the total number of the advocates included in the Unified Register of Advocates of Ukraine or of no less than one-third of all regional bar councils. In the event of the failure by the Bar Council of Ukraine to convene the congress of advocates of Ukraine within sixty days of the receipt of the proposal to convene it, the advocates or the representatives of the regional bar councils who signed the proposal shall take a decision to form an organisational committee for convening the congress of advocates of Ukraine. The organisational committee shall have the right to convene and provide conduct of the congress of advocates of Ukraine, and to nominate a person to preside at the meeting of the congress.

The Law of Ukraine on the Bar and Practice of Law does not expressly provide that each advocate has the right to vote during the congress of advocates of Ukraine because the congress of advocates of Ukraine is composed of the delegates elected by the conferences of advocates of the regions.

The Congress shall be competent if attended by more than half of the elected delegates representing the majority of the conferences of advocates of the regions. Therefore, the Law of Ukraine on the Bar and Practice of Law establishes double quorum requirement:

- more than half of the elected delegates must attend and,
- the majority (i.e., more than half) of the conferences of advocates of the regions must be represented through their delegates.

Both requirements must be fulfilled to have the quorum. If there are 27 regions – the required majority of the conferences of advocates of the regions is 14. The decisions of the congress of advocates of Ukraine shall be taken by a simple majority of votes of the delegates attending the congress.

The Congress of advocates of Ukraine shall:

- elect the chairperson and deputy chairperson of the Bar Council of Ukraine, the chairperson and deputy chairperson of the Higher Qualification and Disciplinary Commission of the Bar, the chairperson and deputy chairperson of the Higher Audit Commission of the Bar, and early recall them;
- approve the statute of the Ukrainian National Bar Association and make amendments to it;
- approve the rules of professional conduct;
- approve the regulation on the Bar Council of Ukraine, the regulation on the Higher Qualification and Disciplinary Commission of the Bar, the regulation on the Higher Audit Commission of the Bar;
- consider and approve reports made by the Bar Council of Ukraine, the Higher Qualification and Disciplinary Commission of the Bar, as well as reports made by the Higher Audit Commission of the Bar;
- elect two members to the Higher Council of Justice;
- approve the budget of the Bar Council of Ukraine, the budget of the Higher Qualification and Disciplinary Commission of the Bar, and the report on the implementation thereof;
- perform other duties in accordance with this Law.

The Congress of advocates of Ukraine may also take a decision on the payment by advocates of annual contributions.

The competences of the Congress comply with European standards.

The Congress operates according to the Rules of Procedure adopted during each Congress at the beginning of its agenda. The President of the Bar shall not be allowed to chair the Congress of advocates of Ukraine because any chairperson of the Congress has a strong influence over what is happening during such Congress. When a chairperson of the Congress is at the same time running as a candidate for the President of the Bar – then he or she is in a conflict of interest. To avoid any problems which might arise when a chairperson of the Congress is at the same time running as a candidate for the President of the Bar or a candidate for any other function – it is recommended that The Congress should separately elect a chairperson of the Congress at the beginning of a meeting and candidates for any functions in Bar bodies may not be a chairperson of the Congress.

Avoidance of a conflict of interest during elections is so important that it is not enough to cover this issue in the Rules of Procedure adopted during each Congress. It is recommended to regulate this issue in the Law of Ukraine on the Bar and Practice of Law. Detailed recommendations how to implement this rule can be found below in Annex 1 Part III point 1.

## **V.2.2. Council**

The Bar Council of Ukraine shall perform functions of advocates' self-government during the period between the congresses of advocates of Ukraine. The Bar Council of Ukraine shall ensure compliance with the decisions of the congress of advocates of Ukraine. Therefore, the Bar Council of Ukraine is an executive body of the Bar.

The Bar Council of Ukraine shall consist of 30 members who have practiced law for at least five years: one representative from each region elected by the conference of advocates of the region, the chairperson and two deputy chairpersons elected by voting of the congress of advocates of Ukraine. The chairperson, deputy chairperson, the secretary and members of the Bar Council of Ukraine shall be elected for a five-year term.

The meeting of the Bar Council of Ukraine shall be convened by the chairperson of the Bar Council of Ukraine, and in the event of his/her absence, by a deputy chairperson, no less than once every two months. The meeting of the Bar Council of Ukraine may also be convened upon the proposal of no less than one-fifth of the total number of all members of the Council. As the total number of all members of the Council is 30, therefore at least 6 members may propose to convene the Bar Council.

In the event of failure by the chairperson of the Bar Council of Ukraine or his/her deputy to convene the meeting of the Council within thirty days of the date of receipt of the proposal to convene it, the members of the Bar Council of Ukraine who signed the proposal shall take a decision to form an organisational committee for convening the Bar Council of Ukraine. The organisational committee shall have the right to convene and provide conduct of meetings of the Council and to nominate a person to preside at the meeting of the Council.

The meeting of the Bar Council of Ukraine shall be competent if attended by more than half of the members of the Council. Therefore at least 16 members must attend. The decisions of the Bar Council of Ukraine shall be adopted by a simple majority of votes of all its members. In case of a tied vote, the chairperson of the meeting of the Council shall have the casting vote.

The Bar Council of Ukraine shall:

- draw up the agenda for, provide convocation and conduct of the congress of advocates of Ukraine;
- determine the representational quota, the procedure for the appointment and election of delegates of the conference of advocates of the region, the congress of advocates of Ukraine;
- ensure compliance with the decisions of the congress of advocates of Ukraine;
- provide organisational, methodological and informational support of the maintenance of the Unified Register of Advocates of Ukraine, exercise control over the activities of the regional bar councils as regards the inclusion of information into the Unified Register of Advocates of Ukraine and provision of excerpts from it;
- approve the rules of procedure of the conference of advocates of the region, the regulation on the regional bar council, the provision on the qualification and disciplinary commission of the bar, the provision on the commission for the assessment of quality, completeness and timeliness of provision by advocates of free legal aid;
- determine the amount of, and procedure for, the payment of advocates' annual contributions for ensuring the implementation of advocates' self-government, manage distribution and use of the contributions (provided that the congress of advocates of Ukraine adopted a decision on payment of advocates' annual contributions for ensuring the implementation of advocates' self-government, and determined the ways of using them);
- determine the amount of deductions from the qualification and disciplinary commissions of the bar to provide operation of the Higher Qualification and Disciplinary Commission of the Bar;
- promote operation of regional bar councils, coordinate their operation;
- assist in ensuring guarantees of practice of law, protection of professional and social rights of advocates;
- adopt decisions on the disposal of funds and property of the Ukrainian National Bar Association in accordance with the intended use of the funds and property as determined by the statute of the Ukrainian National Bar Association and the decisions adopted by the congress of advocates of Ukraine;

- examine complaints against the decisions, actions or omissions of the regional bar councils, their chairperson, reverse the decisions of the regional bar councils;
- determine the official printed magazine of the Ukrainian National Bar Association;
- provide maintenance of the official website of the Ukrainian National Bar Association;
- perform other functions in accordance with this Law and decisions of the congress of advocates of Ukraine.

The competences of the Bar Council comply with European standards.

### **V.2.3. President**

The chairperson of the Bar Council of Ukraine shall be, ex officio, the President of the Ukrainian National Bar Association. The chairperson and two deputy chairpersons are elected by voting of the congress of advocates of Ukraine. The length of term of the President is the same as the length of term of the Bar Council of Ukraine i.e., five years. However, it must be highlighted, that according to Article 55 section 3 of the Law of Ukraine on the Bar and Practice of Law, the chairperson, a deputy chairperson, the secretary, and a member of the Bar Council of Ukraine may be early recalled by the decision of the body of advocates' self-government, which elected the said persons to their positions.

It means that:

- the chairperson and a deputy chairperson may be recalled early by the congress of advocates of Ukraine, who has elected them;
- the secretary of the Bar Council may be recalled early by the Bar Council of Ukraine (as Article 55 section 2 of the Law of Ukraine on the Bar and Practice of Law expressly provides);
- other members of the Bar Council of Ukraine may be recalled early by the conference of advocates of the region, who has elected them.

The chairperson of the Bar Council of Ukraine shall represent the Bar Council of Ukraine and the Ukrainian National Bar Association in the governmental bodies, bodies of local self-government, enterprises, institutions, organisations, as well as in its relations with citizens.

Moreover, the chairperson of the Bar Council of Ukraine shall ensure convocation and conduct of meetings of the Bar Council of Ukraine, distribute duties among his/her deputies, organise and ensure maintenance of business records of the Bar Council of Ukraine, administer funds and property of the Ukrainian National Bar Association pursuant to the approved budget, organise and provide operation of the secretariat of the Ukrainian National Bar Association, and perform other duties provided for by the Law of Ukraine on the Bar and Practice of Law, the resolution on the Bar Council of Ukraine, the statute of the Ukrainian National Bar Association, the decisions of the Bar Council of Ukraine and the congress of advocates of Ukraine.

According to legal provisions in force the Chairperson of the Bar does not participate in the disciplinary proceedings.

Since there was no interview conducted with the President of the Bar therefore it was not possible to establish whether the President of the Bar is overburdened with administrative functions, as the case may be in other countries.

The chairperson of the Bar Council may receive remuneration at the rate determined by the congress of advocates of Ukraine.

The functions of the Chairperson/President comply with European standards and best practices.



## V.2.4. Disciplinary bodies

The disciplinary bodies are:

1. the disciplinary chamber of the qualification and disciplinary commission of the bar at the location of the advocate's workplace address indicated in the Unified Register of Advocates of Ukraine – in the first instance;
2. the Higher Qualification and Disciplinary Commission of the Bar or the court - in the second instance.

The conference of advocates of the region shall elect the chairperson and members of the qualification and disciplinary commission of the bar and may recall them earlier. The chairperson and the members of the qualification and disciplinary commission of the bar shall be elected for a five-year term by the conference of advocates of the region from among the advocates who have been practicing law for at least five years, whose workplace address is in the Autonomous Republic of Crimea, the region, the cities of Kyiv and Sevastopol respectively, and who are entered into the Unified Register of Advocates of Ukraine.

The Higher Qualification and Disciplinary Commission of the Bar shall consist of thirty members: one representative from each region elected by the conference of advocates of the region, the chairperson and two deputy chairpersons elected by voting of the congress of advocates of Ukraine. The chairperson, deputy chairpersons, the secretary and members of the Higher Qualification and Disciplinary Commission of the Bar shall be elected for a five-years tenure.

The Qualification and Disciplinary Commission of the bar shall be composed of the qualification chamber and the disciplinary chamber. The qualification chamber shall be composed of no more than nine members; the disciplinary chamber shall be composed of no more than eleven members. The chairperson and the members of the qualification and disciplinary commission of the bar shall be elected for a five-year term.

The Higher Qualification and Disciplinary Commission of the Bar is a collegial body whose task is to consider complaints against the decisions, actions or omissions of the qualification and disciplinary commissions of the bar.

The Higher Qualification and Disciplinary Commission prepares official positions, guidelines and recommendations and answer to requests for interpretation of the provisions of the Code of ethics, which are available on [the website of the commission](http://vkdka.org) (vkdka.org).

Regarding the disciplinary bodies the following observations have been made:

1. It is contrary to European standards that a disciplinary body (i.e., the Higher Qualification and Disciplinary Commission of the Bar) is a legal entity separate from the Bar itself (see part 3.1 of the Regulation on the Qualification and Disciplinary Commission of the Bar (resolution of the Congress of Advocates of Ukraine on 9 June 2017). It is true that in some jurisdictions disciplinary proceedings are conducted by bodies external to Bars (for example Solicitors Regulation Authority in England and Wales). But according to Article 53 section 1 of the Law of Ukraine on the Bar and Practice of Law, The Higher Audit Commission of the Bar shall be controlled by, and accountable to, the congress of advocates of Ukraine. It is unclear how in practice the congress of advocates of Ukraine, which is the Bar's body, can exercise control over another legal person such as the Higher Qualification and Disciplinary Commission.

For this reason, it is recommended to merge the Higher Qualification and Disciplinary Commission of the Bar with the Bar, restructuring it into the body of the Bar, so that it is no longer a separate legal entity.<sup>10</sup>

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<sup>10</sup> Part 3.1 of the Regulation on the Qualification and Disciplinary Commission of the Bar (resolution of the Congress of Advocates of Ukraine on 9 June 2017)

2. The Regional Qualification and Disciplinary Commissions perform two functions: they deal with the admission to the profession and with disciplinary proceedings. The result of merge of these two functions is that the costs of conducting disciplinary proceedings are covered by fees paid for admission to the profession. Such situation is contrary to the best practices of the Council of Europe member States.

Therefore, it is recommended to:

- a. merge the Regional Qualification and Disciplinary Commissions with the Regional Bars, as the first-choice solution, or
- b. split the Regional Qualification and Disciplinary Commissions into separate Regional Qualification Commissions and Regional Disciplinary Commissions, as the second-choice solution, or
- c. develop such regulation which will:
  - oblige all candidates who have applied to be listed at the list of advocates to pay fees which will cover administrative costs of their entry to this list and costs of running the list of advocates (available online), and
  - oblige all advocates who were found guilty of committing a disciplinary offence to cover the cost of disciplinary proceedings against them.

3. Sometimes an advocate is not aware that he or she has been suspended or even disbarred because the official correspondence sent by the Regional Qualification and Disciplinary Commissions is not delivered at all because the address of an advocate at the list of advocates is incorrect. Of course, such situation is inadmissible and seriously contradicts European standards. Therefore, it is recommended to develop regulation concerning the list of advocates in such a way that each and every advocate shall be obliged to:

- inform about change of address of his/her domicile and/or law office within 7 days after the change at the latest;
- inform about his/her email address which is used for contacts with clients or (as the case may be) declare that he/she does not use email address at all;
- respond to email or letter sent by the Regional Bar by registered mail once per year and confirm, that his/her domicile address and/or his law office address which appears in the list of advocates, is correct and has not changed.

The Code of ethics shall be amended in such a way that the breach of any of the above duties shall constitute a disciplinary offence.

4. In some regions the Regional Qualification and Disciplinary Commissions are not operating daily. Of course, such situation is inadmissible and seriously contradicts European standards. Therefore, it is recommended in the first place to gather some statistical information about functioning of the Regional Qualification and Disciplinary Commissions. Chairpersons of all Regional Qualification and Disciplinary Commissions should be obliged to report to the Council of the Bar several complaints received, number of initiated disciplinary proceedings, number of hearings conducted in disciplinary proceedings, number of verdicts given and any other statistical data which may be relevant to assess the functioning of the Regional Qualification and Disciplinary Commissions. Statistical data should be split into calendar months. If statistical data confirm that some of the Regional Qualification and Disciplinary Commissions “exist only on paper” (as one of the interviewed stakeholders have told) then the merger of the Regional Qualification and Disciplinary Commissions with the Regional Bars seems the only possible solution.

5. The subordinate legal provisions should not repeat the provisions of any acts of the Parliament because such repetition may lead to problem with interpretation when an act of the Parliament is amended, but subordinate legal provisions are not amended and become contrary to any acts of the Parliament.

For this reason, it is recommended to review the Regulation on the Qualification and Disciplinary Commission of the Bar (resolution of the Congress of Advocates of Ukraine on 9 June 2017) and remove such provisions which simply repeat the provisions of the Law of Ukraine on the Bar and Practice of Law (for example part 4 of the Regulation repeats the wording of Article 53 section 2 and 3 of the Law of Ukraine on the Bar and Practice of Law).

6. The relation between the two resolutions below is unclear:

- the resolution of the Congress of Advocates of Ukraine on 9 June 2017 on Regulation on the Qualification and Disciplinary Commission of the Bar;
- the resolution no 78 of the Bar Council of Ukraine adopted on 5 July 2014 with later amendments on Rules of the Higher Qualification and Disciplinary Commission of the Bar.

Both regulations cover the same areas, for example the competences of the Chairperson of the Higher Qualification and Disciplinary Commission of the Bar can be found in part 5.1 of the Regulation (6 competences) and in part 2.3 of the Rules (17 competences).

For this reason, it is recommended to:

- either unify the texts of the resolution of the Congress of Advocates of Ukraine of June 2017 on Regulation on the Qualification and Disciplinary Commission of the Bar with the text of the resolution no 78 of the Bar Council of Ukraine adopted on 5 July 2014 on Rules of the Higher Qualification and Disciplinary Commission of the Bar,
- or review these texts in such a way, that structure and competences are regulated in one of them and disciplinary proceedings are regulated in the second one.

## **V.2.5. Regional bodies**

There are the following regional bodies in the Ukrainian Bar:

1. conference of advocates of the region,
2. regional bar council,
3. chairperson of a regional bar council,
4. qualification and disciplinary commission of the bar,
5. regional bar audit commission.

### **i. Conference of advocates of the region**

The conference of advocates of the region whose workplace addresses are located in the Autonomous Republic of Crimea, the region, the cities of Kyiv and Sevastopol, and who are entered into the Unified Register of Advocates of Ukraine, is the supreme body of advocates' self-government in the Autonomous Republic of Crimea, regions, the cities of Kyiv and Sevastopol respectively.

Not all advocates of the region, but their delegates attend a conference of advocates of the region. Details of the representational quota and the procedure for the nomination and election of delegates are fixed in the Procedure for the nomination and election of delegates to the conference of advocates of the region (resolution of the Bar Council of Ukraine adopted based on Article 47 section 1 of the Law of Ukraine on the Bar and Practice of Law),

The Bar Council of Ukraine has adopted the procedure for the nomination and election of delegates to the conferences of advocates of the region (resolution no 201 adopted on 13

December 2018 amended by resolution no 226 adopted on 14 December 2018). The analysis of this resolution has shown that:

- the procedure for the nomination and election of delegates adopted by the Bar Council of Ukraine in a resolution no 201 on 13 December 2018 amended by resolution no 226 on 14 December 2018 regulates only election of delegates to a conference of advocates of the region before the 2019 Congress held on 15-16 February 2019. Therefore, this is a “single use” resolution applicable only once, not a general source of law.
- the Bar Council of Ukraine has approved 27 procedures for nominating and electing delegates to conferences of advocates of the region which were adopted in 27 regions are attached to resolution no 226 on 14 December 2018 (with further amendment).

Such practice is contrary to European standards. In each region the same procedure for nominating and electing delegates to conferences of advocates of the region should apply. Such unified procedure (the same for each region) shall be established by the Bar Council of Ukraine, not by anybody else. The competence of the Bar Council of Ukraine provided by Article 47 section 1 sentence 2 of the Law of Ukraine on the Bar and Practice of Law cannot be transferred to the regions. Formal approval by the Bar Council of Ukraine of 27 different procedures established in the regions is not enough.

Therefore, it is recommended that the Bar Council of Ukraine should adopt a unified procedure for nominating and electing delegates to conferences of advocates of the region which shall be applicable for unlimited period (until any amendments) and not only once before the nearest Congress.

- The conferences of advocates of the region are often postponed because there is no quorum. Therefore, it is recommended that there should be no quorum requirement during the Repeated Conference of Advocates of the Region. Detailed recommendations on how to implement this rule can be found below in Annex 1 Part III point 3.

## ii. Regional bar council

The regional bar council shall perform the functions of advocates’ self-government in the respective region during the period between the conferences of advocates of the region.

The chairperson and the members of the regional bar council shall be elected for a five-year term by the conference of advocates of the region from among the advocates who have been practicing law for at least five years, whose workplace address is located in the Autonomous Republic of Crimea, the region, the cities of Kyiv and Sevastopol respectively, and who are entered into the Unified Register of Advocates of Ukraine. The number of the members of the regional bar council shall be determined by the conference of advocates of the region.

There are no obstacles to the effective functioning of a regional bar council.

## iii. Chairperson of a regional bar council

The chairperson of the regional bar council shall represent the council in governmental bodies, bodies of local self-government, enterprises, institutions, organisations, and in its relations with citizens.

The chairperson of the regional bar council is elected for a five-year term by the conference of advocates of the region from among the advocates who have been practicing law for at least five years, whose workplace address is located in the region and who are entered into the Unified Register of Advocates of Ukraine. The same person may not be the chairperson or a member of the regional bar council for more than two consecutive terms.

There are no obstacles to the effective functioning of a chairperson of a regional bar council.

iv. Qualification and disciplinary commission of the bar:

The Qualification and Disciplinary Commission of the bar shall be formed for the purpose of determining the level of professionalism of the persons who intend to obtain the right to practice law, and for resolving issues relative to the disciplinary liability of advocates.

The chairperson and the members of the qualification and disciplinary commission of the bar shall be elected for a five-year term by the conference of advocates of the region from among the advocates who have been practicing law for at least five years, whose work place address is located in the Autonomous Republic of Crimea, the region, the cities of Kyiv and Sevastopol respectively, and who are entered into the Unified Register of Advocates of Ukraine.

The necessary changes for the effective functioning of qualification and disciplinary commission of the bar are mentioned above.

v. Regional bar audit commission:

The regional bar audit commission shall be formed and shall operate for the purpose of exercising control over the financial and economic activity of the regional bar council and over the qualification and disciplinary commission of the bar.

The chairperson and the members of the regional bar audit commission shall be elected for a five-year term by the conference of advocates of the region from among the advocates who have been practicing law for at least five years, whose workplace address is located in the Autonomous Republic of Crimea, regions, the cities of Kyiv and Sevastopol, and who are entered into the Unified Register of Advocates of Ukraine. The number of the members of the regional bar audit commission shall be determined by the conference of advocates of the region.

There are no obstacles to the effective functioning of a regional bar audit commission.

## **V.2.6. Other bodies (committees, commissions, etc.), professional unions of lawyers**

i. Higher Audit Commission of the Bar

The Higher Audit Commission of the Bar shall be formed and shall operate for the purpose of exercising control over the financial and economic activity of the Ukrainian National Bar Association, its bodies, regional bar councils, the Bar Council of Ukraine, qualification and disciplinary commissions of the bar, the Higher Qualification and Disciplinary Commission of the Bar, and over operation of regional bar audit commissions.

To perform its functions mentioned above the members of the Higher Audit Commission of the Bar must have access to all necessary documents and must have the right to ask questions to the relevant officials at the Bar and other bodies above. Neither the provisions of the Law of Ukraine on the Bar and Practice of Law nor provisions of the Charter provide for the right of the members of the Higher Audit Commission of the Bar to request handling of the documents and answers to questions.

Interviews conducted with the stakeholders have shown that the Higher Audit Commission of the Bar not always has functioned well. The opinion was also made that expenses of the Bar audited by the Commission are not transparent.

Therefore, in order to improve the functioning of the Higher Audit Commission of the Bar the members of this Commission should be given the right to request any member of any body of the Bar and its staff to handle every document and answer in writing to any questions. Detailed recommendations on how to achieve this aim can be found below in Annex 1 Part III point 4.

ii. Centre of Qualification and Improvement

The Centre of Qualification and Improvement gives accreditation to entities which provide courses for advocates.

The existing approach for accreditation is in conformity with European standards.

### **V.3. Interaction with other public authorities and organisations related lawyer professions**

#### **V.3.1. Interaction with public authorities**

The Ukrainian legislation does not provide any outstanding role to the Minister of Justice in supervising the Bar. Interviews with stakeholders have shown that the co-operation between the Ministry of Justice and Bar is good.

#### **V.3.2. Interaction with free legal aid institutions**

Ukrainian Coordination Centre for Legal Aid Provision

The Ukrainian Coordination Centre for Legal Aid Provision is a governmental agency. Interviews conducted with the stakeholders have shown that in some regions there is a shortage of advocates willing to provide legal aid. Therefore, it is recommended that the Bar should provide some incentives, especially for young advocates, to practice in the region instead of capital city, for example by reduction of subscription (membership fee) to 50 %.

Interviews conducted with the stakeholders have also shown that the exchange of information about possible disciplinary offences or complaints about poor quality of work of a legal aid advocate between the Regional Qualification and Disciplinary Commissions and the Quality Managers of Regional Units of Legal Aid is not sufficient. It is also recommended to develop a system of exchange of information about poor quality of work or disciplinary offences of lawyers between the Regional Qualification and Disciplinary Commissions and the Quality Managers of Regional Units of Legal Aid.

#### **V.3.3. Interaction with professional unions of lawyers and educational institutions**

i. All-Ukrainian Public Organisation “Ukrainian Bar Association”

Apart from the Ukrainian National Bar Association<sup>11</sup> there is another association of lawyers in Ukraine, having very similar name in English: All-Ukrainian Public Organisation “Ukrainian Bar Association”<sup>12</sup>. The Ukrainian Bar Association is a non-governmental organisation, which unites a full range of legal community representatives - lawyers, advocates, notaries, judges, scholars, and other members of legal society.<sup>13</sup> Of course one should appreciate the activity of civil society associations which are a common platform for co-operation of different legal professions but, nevertheless, the use of the word “bar” in the name of such associations is misleading. UNBA has recognised this problem long ago and has filed complaints to the Ministry of Justice and has sought judicial recourse. Ukrainian courts upheld UNBA’s exclusive right to use of the word ‘bar’.

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<sup>11</sup> <https://en.unba.org.ua/>

<sup>12</sup> <https://uba.ua/eng/>

<sup>13</sup> [https://uba.ua/eng/about\\_programme/](https://uba.ua/eng/about_programme/)

The argumentation presented by the All-Ukrainian Public Organisation “Ukrainian Bar Association”, that the International Bar Association also has the word “bar” in its name is not convincing because all bars in the world are national bars which act in a territory of a given country. In other words, supranational bars do not exist. Because of this the name “International Bar Association” is not misleading, but the name “All-Ukrainian Public Organisation “Ukrainian Bar Association” can easily be confused with the Ukrainian National Bar Association.

Another argument presented by the All-Ukrainian Public Organisation “Ukrainian Bar Association” is not convincing, either. The American Bar Association ([About the American Bar Association](#)) is the bar in the United States therefore it can use the word “bar” in its name.

It should be noted that name similarities are in English only. The Ukrainian names of the organisations are “Національна Асоціація Адвокатів України” and “Асоціація правників України” respectively – there are no similarities and therefore there is no confusion or misunderstandings in Ukrainian.

#### ii. Ukrainian Women Lawyers Association

The aim of this organisation is to become a platform for the exchange of experience, development and support of women in the legal profession.<sup>14</sup>

#### iii. Academy of Advocacy of Ukraine

The Academy of Advocacy of Ukraine is an independent private educational institution<sup>15</sup>. The Academy has been working since 1995 on the basis of the Centre for the Promotion of the Legal Profession of the Russian Academy of Advocates. The activity of the Academy is based on the Decree of the President of Ukraine "About the works of advocacy" issued on 30 November 1999.

Interviews conducted with the stakeholders have shown that each year approximately 400 students graduate from this Academy. They have the right to represent a client in court in cases of minor importance. It seems that “cases of minor importance” are cases in which the worth of the subject matter is less than 6 000 UAH. If this is true, even 60 % of cases heard in Ukrainian court are “cases of minor importance.”

It was brought to the attention of the experts that the Academy of Advocacy of Ukraine is not affiliated with the Bar, therefore its name: “the Academy of Advocacy of Ukraine” is possibly misleading. The Academy of Advocacy of Ukraine might be taking unfair advantage of the reputation of the UNBA. According to European standards<sup>16</sup> any information concerning the identity or ownership of an institution offering any kind of services may be considered as misleading when such information deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour. Keeping in mind the fact that the graduates of the Academy of Advocacy of Ukraine have the right to represent a client in court in cases of minor importance - the general public may not be aware that the Academy of Advocacy of Ukraine is not affiliated with the Bar.

The Constitutional Tribunal of Ukraine has ruled that the provision of Article 131<sup>2</sup> of the Ukrainian Constitution, which says that only an advocate can represent another person in court, is unconstitutional. The Constitution must be amended in order to implement this verdict of the Constitutional Tribunal of Ukraine. As for the date of this review, the Constitution has not been amended yet.

There is a risk for the interests of Ukrainian advocates that when the number of graduates of the Academy of Advocacy of Ukraine grow then such graduates may become a competition

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<sup>14</sup> <http://jurfem.com.ua/en/about-us-eng/>

<sup>15</sup> <http://www.aau.edu.ua/>

<sup>16</sup> art. 2b and 3c of the Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

for advocates if the demand for legal services does not grow. Therefore, despite the fact that it seems a very distant perspective in time, it is recommended that the Bar should lobby against the possibility of representation of clients by graduates of the Academy of Advocacy of Ukraine. The bar should do so not in the interest of advocates, but in the public interest because potential clients may not be able to distinguish when they instruct a licensed advocate or an unlicensed graduate and most likely will choose the one which will be cheaper.

Interviews with stakeholders have shown no particular issues requiring recommendations in the relationship of the UNBA and the professional unions and educational institutions mentioned above.

## **V.4 Gender Situation**

Out of 58 999 licensed advocates, 62,3 % are male advocates and 37,7 % are female advocates. The Council of the Bar consists of 27 members, out of which 12 are female and 15 are male. There is a Committee on Gender Policy in the Bar.

## **V.5. Recommendations and conclusions**

In conclusion, the internal structure of the Ukrainian National Bar Association in general complies with European standards, but there are several shortcomings. Therefore, some recommendations are provided further for the bar association to improve its compliance with European standards:

1. It is a common European practice that there is only one Bar in a country which has a legal personality. However, Bars which have many advocates, also have regional structures which also have a legal personality.

For historical reasons the situation in Ukraine is different.

There are two separate legal entities in each of the 27 regions: the Regional Bar (which represents advocates from that region) and the Regional Qualification and Disciplinary Commission (which is responsible for admission into the profession and for disciplinary proceedings).

Also, at the national level there are two separate legal entities: the Ukrainian National Bar Association (which has two functions: representative and regulatory) and The Higher Qualification and Disciplinary Commission of the Bar (which consider complaints against the decisions, actions or omissions of the qualification and disciplinary commissions of the bar).

The Ukrainian model in which a separate legal entity is responsible for admission into the profession and for disciplinary proceedings contradicts European standards because the two key functions are taken away from the Bar. Only two functions are left for the Bar: representation of advocates and training. However, according to European standards the Bar should not become a trade union of advocates, representing their interests. Also, training is not a key function.

Separate legal entities at the national and regional levels responsible for the representation of advocates and for admission into the profession and for disciplinary proceedings create a strange situation in which the Bar as a legal entity does not perform one of the key functions which are performed by the vast majority of European Bars i.e., disciplinary proceedings.

Moreover, the situation in which the Regional Qualification and Disciplinary Commission is responsible both for admission to the profession or for conducting disciplinary proceedings in practice has such consequences that the costs of



disciplinary proceedings against advocates are covered by admission fees. This seems contrary to European standards.

The next consequence of the fact that the Bar at the national level is a legal entity separate from regional bars is that – from a formal perspective – local Bars are not bound by decisions adopted by a separate legal entity. Of course, all legal entities (national and regional) are subject to national legislation, but it is also a common practice of most European Bars that they adopt internal resolutions which regulate different issues concerning the details of the functioning of the Bar. The Bar through the whole country should function in a unified manner, following the same procedures etc. It seems that such unification is difficult to accomplish when local Bars are separate legal entities which govern themselves.

It must be noted that Article 57 of the Law which provides that “the decisions of the congress of advocates of Ukraine and the Bar Council of Ukraine shall be binding on all advocates; the decisions of conferences of advocates of the region and regional bar councils shall be binding on advocates whose work place address is located in the respective region, and who are entered into the Unified Register of Advocates of Ukraine” regulates another issue i. e. the binding effect of the decisions of different bodies of the Bar upon individual advocates. The wording of the provision of article 57 of the Law does not give ground for interpretation that the decisions of the Congress of the Council of the Ukrainian National Bar Association are legally binding on The Higher Qualification and Disciplinary Commission. The same applies to the decisions of the conferences and councils of the regional bars – their decisions are not legally binding upon the Regional Qualification and Disciplinary Commissions.

Moreover, the mere fact that some issue is regulated by legal provisions does not mean that it is followed in practice through actions of different legal bodies, which are formally independent from each other.

Therefore, it is recommended to consider a reform after which Regional Qualification and Disciplinary Commissions (existing as separate legal entities) should be merged with the Regional Bars and the Higher Qualification and Disciplinary Commission of the Bar (which is a separate legal entity according to Article 52 section 9 of the Law of Ukraine on the Bar and Practice of Law) should be merged with the Ukrainian National Bar Association. The suggested improvement may require a significant reform but nevertheless it is definite that the current split of competences weakens the Ukrainian Bar and leads to a different practice in the regions.

2. According to the Law of Ukraine on the Bar and Practice of Law there is no limit of the terms of office. For this reason, it happens that the same person is a member of Bar bodies for more than twenty years. Although the present review highlights the general European practice<sup>17</sup> of maximum of 3 years for term of office in the bodies of the Bar, as well as of maximum of two consecutive terms of office.

Meanwhile the situation in UNBA is contrary to described European practices.

Obviously, the rotation of persons holding the functions is needed. According to Article 48 sec. 2 of the Law of Ukraine on the Bar and Practice of Law “the same person may not be the chairman or a member of the regional bar council for more than two consecutive terms.” Clearly this provision concerns only the chairman or a member of the regional bar council. Also, according to Article 50 sec. 2 of the Law of Ukraine on the Bar and Practice of Law “no person may be the chairman or a

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<sup>17</sup> For the purpose of this report the “general European practice” stands for an observation of existing practice (regulations) of the bars of the Council of Europe member States and other European countries. These practices are considered as a standard per se, although not being codified documentary.

member of the qualification and disciplinary commission of the bar for more than two consecutive terms". This provision concerns only the chairman or a member of the qualification and disciplinary commission. However, the Law of Ukraine on the Bar and Practice of Law does not contain similar provisions concerning the President of the Bar, the members of the Bar Council, the members of the Higher Audit Commission, the members of the Higher Qualification and Disciplinary Commission, the members of the regional bar audit commission. It is against European practice for members of some bodies of the bar not to be able to perform their functions for more than two consecutive terms (the chairman and a member of the regional bar council, the chairman and a member of the regional qualification and disciplinary commission) and for members of other bodies not being subject to a similar restriction. Same standards are applied to other bar associations in this report. Detailed recommendations on how to achieve this aim can be found below in Annex 1 Part III point 5.

It is also recommended to consider introducing a rotation of members of all bodies of the Bar so that each year 1/3 of members is replaced by newly elected members. However, the Bar must consider if organising each year elections of 1/3 of members of different bar bodies is not too expensive.

3. The relations between the Bar and an advocate are administrative law relations because an advocate is subordinated to the decisions of the Bar. In administrative law relations different rule is applicable: "allowed is only this which has a clear legal basis". Thus, the Bar is a public body which performs administrative functions in the scope assigned by law. According to European standards the decisions of bodies with administrative functions are subject for challenging in the courts of administrative jurisdiction. This is also true in Ukraine.

Meanwhile in some European jurisdictions the decision of the disciplinary bodies of the bars can be challenged to the specialised courts (e.g., disciplinary chambers within the supreme instances of the courts) or courts of general competence.

Therefore, it is recommended to consider whether hearing disciplinary cases by administrative courts is the most appropriate system for Ukraine.

## VI. COMPARATIVE ANALYSIS AND THE FINAL CONCLUSIONS

1. Bar associations of Armenia, Belarus, Georgia, Republic of Moldova, and Ukraine basically following the standard European internal structure of the bar association: general meeting (assembly, conference, congress), council, president, disciplinary body. Bigger bar associations have regional bodies while smaller ones do not.
2. Internal structure of all bar associations assessed in the current report, except for the Belarusian Bar Association, in general complies with European standards, although several shortcomings or problematic issues exist.
3. The excessive involvement of the Ministry of Justice in the activities of the bar associations in Belarus, e.g., practically controlling the appointment of the chairperson of the Belarusian Bar, is so harsh that the internal structure of the Belarusian Bar must be regarded as not in compliance with European standards.
4. In some countries the problematic aspects of the internal structure of bar associations start from legal personality of the bodies – self-government bodies are divided into separate legal entities or are outside of bar association as legal entity (Belarus, Ukraine). Some bar associations have too complicated structures with possibly too many bodies (the Republic of Moldova), while in others there is a clear lack of one of the standard self-governing bodies.
5. All five Bar associations of Armenia, Belarus, Georgia, the Republic of Moldova, and Ukraine are legal entities and have Charters. However, the analysis of the Charters of the Bars has shown that the Charters include many provisions which either repeat or alter the provisions of the Law (Act of Parliament). Therefore, it is recommended to review the texts of the Charters to avoid repetition in the Charter what already is written in the acts of Parliament. The Charter may not alter the provisions of acts of Parliament. Therefore, it is also recommended to review the texts of the Charters to eliminate all provisions of the Charter which alter the provisions of acts of Parliament. Some detailed examples of such provisions of the Charters can be found in point I of the Annex 1.
6. The right to challenge to court every resolution adopted by any body of the Bar is another example of different European practice. In some countries it is possible to challenge to court only such resolutions of Bar bodies which are administrative decisions concerning individuals (refusal to enrol to the list of advocates). In other countries all resolutions may be challenged. This study has shown that this right is often used to question the results of elections in the Bar. Without doubt such a situation creates uncertainty when the results of elections are challenged by the party that has lost the election. Therefore, it is recommended to analyse how such uncertainty could be avoided.
7. All candidates running in elections for offices in bar associations should be known in advance. Nomination of candidates on Election Day should be inadmissible. It's a common solution in European Bars that candidates apply in advance. The prohibition of the nomination of a candidate at the last minute on Election Day is democratic.
8. It is a common European practice that if new members of Bar bodies are not elected before the end of the term of office of previous members, then old members should continue to perform their duties till new members are elected to avoid a paralysis of any of the Bar bodies. Therefore, it is recommended to introduce provisions that all members of all Bodies of the Bar shall be required to perform their duties until the newly elected bodies are formed.

9. Another example of different European practice is the performance of more than one function by the same person. In some European Bars it is quite common that the same person performs two functions: at regional and at the national level. In other Bars it is either not allowed or not recommended. The reason of this incompatibility rule is that one person has sufficient time to perform well only one function. Therefore, it is recommended to analyse the situation and choose the best option, taking into consideration local circumstances. However, this study has shown that greater rotation of people performing functions in the Bars is expected.
10. It is a common European practice that every member of any body of the Bar can be dismissed by the body which has elected him or her. The Act of Parliament should contain clear provisions on grounds and procedure of dismissal. The dismissal during a term of office should require a higher majority than is necessary for election because elected members of bodies of the Bar need a certain degree of stabilisation and should not work under constant threat that any group of advocates which is unhappy with their performance or programme which they realise may dismiss them. Therefore, it is recommended to introduce a higher majority for dismissal of the officers of bar association.
11. The President of the Bar should not be the Chairperson of the General Assembly (the Congress) of Advocates. The General Assembly (the Congress) elects the President of the Bar (the Chairperson of the Association of Advocates). Any chairperson of the General Assembly (the Congress) has a strong influence over what is happening during such General Assembly (Congress). When a chairperson of the General Assembly (the Congress) is at the same time running as a candidate for the President (Chairperson) of the Bar – then he or she is in a conflict-of-interest situation. To avoid any problems which might arise when a Chairperson of the General Assembly (the Congress) is at the same time running as a candidate for the President of the Bar – it is recommended that the General Assembly (the Congress) should elect a Chairperson of the General Assembly (the Congress) at the beginning of a meeting. Current members of the Bar bodies and candidates running in any functions in Bar bodies should not be a Chairperson of the General Assembly (the Congress). The same should apply to the heads of the regional bodies of the Bars.
12. It is a common European practice that all elections are held in a secret ballot. Therefore, it is recommended to introduce a secret ballot rule in the bar associations that do not have it yet.
13. It is a common European practice that there is a limit of the terms of office of the same person. Usually, the same person is allowed to have the same function for two consecutive terms of office. However, there are also views in favour of a stricter approach (especially in bigger bar associations) that after two consecutive terms of office it should be prohibited to run for the third term of office – even after a break after the second one. The reason of this rule is that a rotation of people is needed.
14. Therefore, it is recommended to introduce a rule that any member of any body of the Bar can be re-elected only once.
15. The length of the term of office should be the same for all bodies of the Bar and limited to three years. However, Bars may also consider four years long term of office.
16. The disciplinary procedure against advocates should be similar to criminal procedure in criminal courts with clear separation of the following roles:
  - the aggrieved (injured) party, who often is an advocate's client,
  - the complaining party, who usually is the aggrieved party,

- the accused party who is an advocate who faces allegations for the breach of deontological provisions,
- the accusing (prosecuting) party, who should be independent and separated from the decision-making party (the disciplinary court),
- the decision-making body (the disciplinary court).

According to the common disciplinary practice of European Bars the disciplinary proceedings should be divided into two stages:

- a) the preliminary stage during which the accusing (prosecuting) party verifies the complaint against an advocate and decides if there are grounds to continue disciplinary proceedings (it must be noted that in practice of European bar associations big number of complaints is ungrounded), and
- b) the decisive stage during which the decision-making body (the disciplinary court) determines if an advocate is guilty of misconduct and imposes disciplinary sanctions.
- c) The roles of an accuser and of decision-making body (the disciplinary court) must be separated to guarantee a fair trial.

17. The Bar has to be independent from state authorities. However, there will not be a real independence in decision-making without financial independence. Because of this the Bar may not be financed from the state budget: either indirectly or directly. The situation in which the Bar is allowed to use for free premises granted by state authorities constitutes a serious threat to the independence of the Bar. The same applies if the rent is reduced. All financial resources necessary for the functioning of the Bar should come from the subscription of the members of the Bar and other sources. Non-payment of subscription should constitute a disciplinary offence and eventually may result in termination of the right to practice law and crossing out from the list of advocates.

18. Problems with organisation of General Meetings, which exist in some countries, should be solved by reduction of the number of participants. Advocates should be represented by delegates elected in the regions. Problems with quorum should be solved that there should be no quorum requirement during the second meeting of the General Assembly, which may be convened on the same day one hour later after the first meeting.

19. The recommendations specific for each bar association are provided in the country-relevant part of the Review.

# **ANNEX 1. DETAILED RECOMMENDATIONS INCLUDING POSSIBLE DRAFTING OF NEW LEGAL PROVISIONS**

## **I. Concerning the Georgian Bar Association**

**1. The following provisions of the Charter of the Georgian Bar Association are contradicting with the provisions of the Law of Georgia on Lawyers of 20 June 2001:**

- a. the two-week time limit in Article 13 section 1 of the Charter contradicts with Article 24 section 1 of the Law of Georgia on Lawyers
- b. Article 13 section 2 of the Charter contradicts with Article 24 section 2 of the Law of Georgia on Lawyer,
- c. Article 14 section 5 of the Charter contradicts with Article 26 section 6 second sentence of the Law of Georgia on Lawyers.

**2. Income from subscription can be increased by:**

- a. amendment of regulation on subscription in such a way that advocates who are on the roll of advocates, but do not practice, should either pay 10 % of subscription paid by practising advocate or apply to be crossed out from the roll,
- b. amendment of regulation on subscription in such a way that retired advocates should either pay 10 % of subscription paid by practising advocate or apply to be crossed out from the roll,
- c. amendment of regulation on subscription in such a way that interns who also should be members of the Bar shall be obliged to pay 25 % of subscription paid by practising advocate,
- d. amendment of regulation on subscription in such a way that all practising advocates pay the same subscription because current situation in which advocates who practice in Tbilisi pay twice as much in comparison with advocates who practice outside Tbilisi seems to be contrary to the principle of equality in law and may be perceived by advocates who practice in Tbilisi paying higher subscription as discrimination based on place of residence which is prohibited by Article 11 of Georgian Constitution,
- e. considering differentiation of subscription in such a way that the subscription rate shall depend on years of practice of an advocate, with higher rates due from more experienced advocates,
- f. collecting subscription also from advocates employed by Legal Aid Council despite the fact that they are prohibited from practice,
- g. introducing an electronic system of payment of subscription based on different bank accounts of each and every advocate and intern, onto which a subscription must be paid (ie. so called mass payment system) and automatically generated and sent by email calls for payment after the lapse of 7 days after the date when payment was due,
- h. improving the execution of collection of subscription by automatically generated commencement of disciplinary proceedings against advocates who ignored call for payment sent by email within 1 month after such email has been sent (according to Article 33 of the Law of Georgia on Lawyers),
- i. improving the execution of collection of subscription by standardisation of disciplinary proceedings for non-payment of subscription and imposing disciplinary sanction of warning in each case when any advocate was late with payment or disciplinary sanction of suspension for 6 months in each case when an advocate or intern was late with payment more than two times.

### **3. List of Bar bodies – recommendation to amend Article 23 section 1 of the Law of Georgia on Lawyers.**

It is recommended to amend Article 23 section 1 of the Law of Georgia on Lawyers in such a way that the list of bodies is complete and includes:

- a. the General Meeting of the Bar Association,
- b. the Executive Board;
- c. the Ethics Commission;
- d. the Audit Commission,
- e. the Training Centre for Lawyers,
- f. the Legal Aid Council,
- g. the Disciplinary Prosecutor and the Disciplinary Court (see remarks in part I.3.d and other recommendation no 23).
- h. the President (the Chairperson) of the Bar;

It is also recommended to add new general rule: “Members of all bodies of the Bar shall be elected by secret ballot with an unlimited number of candidates.” (it could be new Article 23a of the Law of Georgia on Lawyers).

### **4. Lack of unification in terminology: ”The General Assembly” or “The General Meeting”.**

It is recommended to unify the terminology: either ”The General Assembly of the Bar Association” Article 24 section 1 of the Law of Georgia on Lawyers) or “The General Meeting of the Bar Association” (Article 12 section 1 of the Charter). However, this might be only a discrepancy in translation.

### **5. Too large number of participants of the General Assembly – detailed recommendations to solve practical problems with smooth running of a General Assembly:**

- a. lower the number of participants of the General Assembly of the Bar to maximum 200 advocates or interns by introducing a system in which the General Assembly of the Bar is composed of delegates previously elected in such a way that there is 1 delegate for 50 advocates or interns,
- b. create election regions on the basis of districts of Tbilisi so that all election regions in Tbilisi elect together 140 delegates,
- c. create 4 another election regions on the basis of existing regional offices of the Bar in 4 major cities so that these 4 election regions elect 48 delegates,
- d. appoint temporary leaders of all election regions and assign them a task to elect leader of election region together with nearest election of delegates for the General Assembly among advocates,
- e. add information about assignment of each advocate to election region to the roll of advocates,
- f. create election units for interns at each cohort (class) of interns,
- g. appoint temporary leaders of all election units for interns and assign them a task to elect leader of election unit together with nearest election of delegates for the General Assembly among interns,

h. organise election of delegates for the General Assembly of the Bar among advocates in election regions and among interns in election units during the period between 6 and 3 months before the General Assembly,

i. allow voting by proxy on the basis of power of attorney in writing registered by leader of election region or leader of election unit for interns 14 days before the General Assembly at the latest so that 10 days before the General Assembly at the latest leaders of election regions of advocates and leaders of election unit for interns can provide alphabetical lists of delegates showing number of votes assigned to each delegate (i. e. the delegate's own vote + proxy vote) to manager of electronic system for calculation of votes,

j. instead of stamping each and every voting card by representative of each candidate for the President of the Bar hire and use electronic system for calculation of votes during elections and all other resolutions adopted by the General Assembly,

k. allow voting time long enough so that all delegates willing to vote will have an opportunity to do so,

l. adopt detailed election procedure specifying all above issues.

**6. Who shall convene the Extraordinary General Assembly of the Bar Association in situation described in Article 13 section 4 of the Charter – i. e. upon initiative of the Executive Board of the Association, Audit Commission, Ethics Commission and at least 10 percent of the Association members ? – detailed recommendations to amend Article 13 section 3 and section 5 of the Charter**

According to Article 13 section 4 of the Charter the Extraordinary General Assembly of the Bar Association may be convened by the Executive Board of the Association, Audit Commission, Ethics Commission and at least 10 percent of the Association members. However it is not clear who shall convene the Extraordinary General Assembly of the Bar Association in situation described in Article 13 section 4 of the Charter – i. e. upon initiative of the Executive Board of the Association, Audit Commission, Ethics Commission and at least 10 percent of the Association members: the Chairperson or the body who has had such initiative.

The wording of Article 13 section 4 of the Charter implies that the body who has had such initiative has also the power to convene it, but the wording of Article 13 section 5 of the Charter says the contrary: that the Chairperson “shall ensure the convening” upon request by the persons specified in Paragraph 13.4. Therefore Article 13 section 4 of the Charter (according to which the Extraordinary General Assembly is conveyed by body who has had such initiative) is contrary to Article 13 section 5 of the Charter (according to which the Extraordinary General Assembly should always be convened by the Chairperson with the exception that if the Chairperson does not convey it then the persons mentioned in Article 13.4. of the Charter have the right to convene).

Therefore, it is recommended to:

a. amend Article 13 section 3 of the Charter so that it shall receive the following wording: “The President of the Bar has the right to convene the General Meeting.”

b. amend Article 13 section 5 of the Charter by replacing the words “ensure the convening” with the word “convey”.

**7. Vote by proxy during the General Assembly – detailed recommendations to amend Article 24 of the Law of Georgia on Lawyers:**

It is recommended to:



a. introduce new rule that: “each advocate has the right to vote and the right to be elected as member of Bar bodies, but during the General Assembly advocates exercise their right to vote by previously elected delegates” (it could be section 1a in Article 24 of the Law of Georgia on Lawyers),

b. introduce new right of an advocate: “vote (in person or by previously elected delegates during the General Assembly) and the right to be elected as member of Bar bodies.” (it could be new letter e) in Article 4 section 1 of the Law of Georgia on Lawyers

c. introduce new rule that: “each advocate or delegate has one vote.” (it could be new section 1b in Article 24 of the Law of Georgia on Lawyers),

d. add new rule that: “each advocate may either exercise his/her right to vote in person or by previously elected delegate or by proxy.” (it could be new section 1c in Article 24 of the Law of Georgia on Lawyers).

#### **8. Discrepancies in the list of competencies of the General Assembly – detailed recommendations concerning Article 24 section 3 of the Law of Georgia on Lawyers and Article 12 section 2 of the Charter.**

The competences of the General Assembly of the Bar Association are listed in Article 24 section 3 of the Law of Georgia on Lawyers (5 competences) and also in Article 12 section 2 of the Charter (10 competences).

If the General Assembly of the Bar Association has 5 competences according to Article 24 section 3 of the Law of Georgia on Lawyers, then the Charter may not add additional competences. It is so because the Charter is a subordinate source of law in comparison with an Act of Parliament.

The competence to elect a vote-counting commission is purely technical (see Article 12 section 2 j) of the Charter) therefore there is no need to amend Article 12 section 2 j) of the Charter.

The competences to adopt symbols of the Bar, form of lawyer’s gown and rules of lawyers’ incentivisation, listed in Article 12 section 2 g) – i) of the Charter clearly go beyond the competences listed in Article 24 section 3 of the Law of Georgia on Lawyers. The Charter (as a subordinate source of law) may not broaden competences listed in Article 24 section 3 of the Law of Georgia on Lawyers.

Of course, the General Assembly of the Bar Association should be competent to adopt symbols of the Bar, form of lawyer’s gown and rules of lawyers’ incentivisation – but amendment of Article 24 section 3 of the Law of Georgia on Lawyers is necessary.

#### **9. The functioning of the Executive Board – detailed recommendations to amend Article 14 of the Charter:**

It is recommended to:

a. regulate how the meeting of the Executive Board should be convened for example by adoption of the following rule: “The meeting of the Executive Board shall be conveyed at least 7 days before by emails with automatic confirmation that an email has been displayed sent to all members of the Executive Board with the agenda and draft resolutions attached and confirmed by telephone one day before. Alternatively, if the member of the Executive Board does not use electronic mail, then he or she should be informed in writing by letter sent by registered post.” This could be section 7a in Article 14 of the Charter.

b. regulate who can convene the Executive Board in case of absence or illness of the Chairperson of the Association for example by adoption of the following rule : “in case of absence or illness of the President of the Bar (the Chairperson of the Association) the

Executive Board meeting shall be conveyed by any 3 members of the Executive Board.” This could be new section 7b in Article 14 of the Charter.

c. allow the meeting may to be held remotely for example by adoption of the following rule: “The members of the Executive Board may either meet in person or remotely provided that such videoconferencing systems are used which are encrypted and allow every member of the Board to participate in discussion in real time and to vote.” This could be new section 7c in Article 14 of the Charter.

d. introduce remuneration of the members of the Executive Board for example by adoption of the following rule: “The members of the Executive Board shall receive a per diem as compensation for their time spent to attend the meeting. Moreover, members of the Executive Board who arrive from outside Tbilisi are entitled to reimbursement of their travel expenses if they come in person to a meeting.” and stop giving continuous professional education credit points for attendance. This could be new section 16 in Article 14 of the Charter.

e. introduce regular training for all members of the Executive Board on Bar issues, corporate management, procedural rules of adopting and drafting resolutions etc.

#### **10. The name of the function: “the President of the Bar” or “the Chairperson of the Bar” – detailed recommendation concerning Article 27 of the Law of Georgia on Lawyers and Article 17 of the Charter**

The President of the Bar function is named “The Chairperson of the Bar Association (see Article 27 of the Law of Georgia on Lawyers) or the Chairperson of the Bar Association (see Article 17 of the Charter).

However, this function is named “the President of the Bar” in almost all European Bars.

The name “chairperson” is connected with so called “collective bodies” so the General Assembly has a chairperson, committees have a chairperson etc.

Therefore, it is recommended to replace the words “The Chairperson of the Bar Association” with the words “The President of the Bar” both in the Law of Georgia on Lawyers and in the Charter.

#### **11. Other detailed arguments why the President of the Bar should be allowed to practice:**

The Chairperson of the Bar should be allowed to practice because:

- if the Chairperson is banned from practice, he or she no longer will be practicing advocate which may cause that in such situation the Chairperson has a different views and different perspective in comparison with the views of practising advocates, Bars consider it crucial that their presidents are practicing lawyers as they are aware - through their daily practice - about the prevailing issues which the profession is facing.
- there is a danger that if the Chairperson is banned from practice, then he or she may become an officer of the Bar especially when the salary from the Bar is the only income of the Chairperson,
- usually, the Chairperson will return to his or her law firm after the end of his or her tenure. Because of this it is important that the Chairperson can continue to practice keeping his or her law firm going. Otherwise, the Chairperson would not have a place to return to because if the Chairperson was obliged to stop practicing, then he or she would risk losing their client base which would constitute a real economic risk for the Chairperson.

- if the Chairperson is banned from practice, then prominent advocates who successfully run their law office and develop their legal career may not be interested to be elected as the Chairperson because their income as the Chairperson will be much smaller than their income as a successful advocate. In other words, if the Chairperson is banned from practice there is a danger of “negative selection” when advocates who are not successful in their legal career will be candidates for the Chairperson instead of most successful advocates, majority of stakeholders interview during this Council of Europe project have supported the idea of abolishing the ban to practice.

Therefore, it is recommended to amend Article 27 section 3 of the Law of Georgia on Lawyers and art 17 section 4 of the Charter so that the Chairperson of the Bar (the President) should be allowed to practice.

**12. Substitution of an advocate by an intern – detailed recommendation concerning Article 16 section .3 of the Law of Georgia on lawyers:**

It is recommended to amend Article 16 section .3 of the Law of Georgia on lawyers so that it shall receive the following wording: “an intern may substitute an advocate before the first instance courts and the first instance administration authorities after three months after the commencement of the Professional Adaptation Programme. After six months, an intern may substitute an advocate before all other courts, with the exception of the Constitutional Tribunal and the Supreme Court.”

## **II. Concerning Bar Association of the Republic of Moldova**

**1. If the Bar must have a Charter it is recommended to review all provisions of the Statute and delete provisions which merely repeat the provisions of the Law on Advocacy:** In particular the following provisions of the Statute are redundant:

- a. Article 41 section 4 of the Statute repeats Article 36 section 2 of the Law on Advocacy,
- b. Article 41 section 5 of the Statute repeats Article 36 section 3 of the Law on Advocacy,
- c. Article 42 of the Statute repeats Article 37 of the Law on Advocacy,
- d. Article 43 section 4 of the Statute repeats Article 38 section 4 of the Law on Advocacy,
- e. Article 44 section 1 of the Statute repeats Article 40 section 1 of the Law on Advocacy,
- f. Article 44 section 2 of the Statute repeats Article 40 section 2 of the Law on Advocacy,
- g. Article 48 section 2 of the Statute repeats Article 44 section 1 of the Law on Advocacy,
- h. Article 59 section 1 of the Statute repeats Article 56 section 1 of the Law on Advocacy,
- i. Article 52 section 1 of the Statute repeats Article 48 section 1 of the Law on Advocacy,
- j. Article 52 section 6 of the Statute repeats Article 48 section 2 of the Law on Advocacy,
- k. Article 52 section 8 of the Statute repeats Article 48 section 5 of the Law on Advocacy,
- l. Article 52 section 16 of the Statute repeats Article 48 section 6 of the Law on Advocacy,
- m. Article 53 section 1 of the Statute repeats Article 50 section 1 of the Law on Advocacy,
- n. Article 53 section 3 of the Statute repeats Article 50 section 3 of the Law on Advocacy,
- o. Article 45 section 1 of the Statute repeats Article 41 section 1 of the Law on Advocacy,
- p. Article 45 section 2 of the Statute repeats Article 41 section 2 of the Law on Advocacy,
- q. Article 45 section 5 of the Statute repeats Article 41 section 5 of the Law on Advocacy,
- r. Article 47 section 8 of the Statute repeats Article 43 section 3 of the Law on Advocacy.

The following provisions of the Statute contradict with the provisions of the Law on Advocacy:

- a. Article 43 section 6 of the Statute contradicts with Article 38 section 6 of the Law on Advocacy,
- b. Article 42a of the Statute contradicts with Article 37a of the Law on Advocacy,
- c. Article 42 a of the Statute contradicts with Article 37 a of the Law on Advocacy,
- d. Article 46 section 1 of the Statute contradicts with Article 42 section 1 of the Law on Advocacy.

**2. The President of the Bar should not be the Chairperson of the Congress of Advocates – detailed recommendation to amend Article 41 section 9 of the Statute:**

It is recommended to amend Article 41 section 9 of the Statute so that it shall receive for example the following wording: “The Congress should elect a Chairperson and a Deputy Chairperson of the Congress at the beginning of a meeting. Current members of the Bar bodies and candidates running in any functions in Bar bodies should not be a chairperson of the Congress

**3. Requirements for the members of the Council - detailed recommendation to amend either Article 38 section 2 of the Law on Advocacy or Article 43 section 2 of the Statute”**

**4. Strengthen the position of the President of the Bar – detailed recommendation to amend Article 38 section 2 of the Law on Advocacy and to delete Article 43 section 2 of the Statute”**

It is recommended to amend Article 38 section 2 of the Law on Advocacy which could receive for example the following wording: “The Council of the Bar shall consist of 9 members: the President of the Bar, the Deputy President of the Bar appointed by the President of the

Bar, the Second Deputy President of the Bar appointed by the President of the Bar, 3 members of the Chisinau Collegium of Advocates who have at least five years professional experience elected by the General Assembly of the Chisinau Collegium of Advocates, 1 member of the Bălți Collegium of Advocates who has at least five years professional experience elected by the General Assembly of the Bălți Collegium of Advocates, 1 member of the Cahul Collegium of Advocates who has at least five years professional experience elected by the General Assembly of the Cahul Collegium of Advocates, 1 member of the Comrat Collegium of Advocates who has at least five years professional experience elected by the General Assembly of the Comrat Collegium of Advocates. The Dean of the Collegium of Advocates may not be elected as member of the Council of the Bar.” Article 43 section 2 of the Statute should be deleted.

**5. The right to request an extraordinary meeting of the Bar Council – detailed recommendation to amend Article 43 section 5 of the Statute:**

It is recommend to add new section 5a in Article 38 of the Law on Advocacy for example with the following wording: “in the event of failure by the President of the Bar or his/her Deputy to convene the meeting of the Bar Council within thirty days of the date of receipt of the request to convene it, the members of the Bar Council who signed the request shall may convene the meeting of the Bar Council, provide its agenda and nominate a Chairperson of such extraordinary meeting.”

**6. The protection of privacy and personal date of advocates – detailed recommendation to amend Article 43 section 4 of the Statute:**

It is recommended to amend Article 43 section 4 of the Statute, so that it shall receive for example the following wording: “the Council of the Bar Association meets once a month. The President of the Bar shall convene meetings of the Bar Council. The Board shall be convened at least 15 days before the date of the meeting, by announcing in writing or by email the members and by placing the agenda and the materials to be examined on the password protected Extranet of the official website of the Bar or uploaded elsewhere to a password protected cloud.”

**7. The improvement of decision making during the meetings of the Council of the Bar – detailed recommendations concerning by-laws of the Council:**

It is recommended to adopt by-laws of the Council with detailed procedure of managing meetings of the Council. Such procedure could among others specify that:

- the agenda shall clearly indicate whether each of the items of the agenda is for decision or for information only,
- the agenda should indicate the time when the meeting will start and the time when the meeting will end,
- each item on the agenda should have its own timeslot for discussion and voting and the President of the Bar shall be responsible for keeping the time limits,
- each item on the agenda should be referred by one of the members of the Council (the Rapporteur), who shall draw attention only to key issues and consequences of the decision, without reading materials which were made available before the meeting,
- immediately after the Report of the Rapporteur the President shall make a list of members, which want to participate in a discussion, and shall equally divide time

- available according to time-slot between all members who want to participate in a discussion so that everybody has a chance to speak for the same length of time,
- the prolongation of a timeslot shall be allowed only if a decision is made to remove other items from the agenda,
  - replies to previous interventions shall be allowed only when there is still some time left within the timeslot to review a given issue,
  - after all members, who wanted to participate in a discussion, have spoken, the President shall immediately carry a vote and pronounce the results of voting,
  - any discussion on results of voting shall be prohibited,
  - immediately after the President has pronounced the results of voting, the Council shall begin work upon next item on the agenda.

**8. The strengthening of the position of the President of the Bar – detailed recommendation to add new section 10 to Article 35 of the Law on Advocacy and to add new section 12 to Article 44 of the Statute:**

It is recommended to:

- add new section 10 to Article 35 of the Law on Advocacy with the following wording: “All bodies of the Bar co-operate in implementation of the Long-term Strategy and Annual Plans adopted by Congress. The President of the Bar, within framework established by the Council of the Bar, if any, decides about ways and methods of such implementation.”
- add new section 12 to Article 44 of the Statute with the following wording: “Each candidate running for the President of the Bar shall present the names and curriculum vitae’s of two persons who will become the Deputy President and the Second Deputy President in case he or she is elected. Each candidate running for the President of the Bar shall also present a draft of a Long-term Strategy and aims which he or she wishes to achieve during his or her Presidency.”

**9. The unification of the term of office of all Bar bodies – detailed recommendations to amend: Article 40 section 1 of the Law on Advocacy, Article 44 section 1 of the Statute, Article 50 section 1 of the Law on Advocacy, Article 53 section 1 of the Statute, Article 41 section 2 of the Law on Advocacy, Article 45 section 2 of the Statute:**

It is recommended to:

- amend Article 40 section 1 of the Law on Advocacy so that it shall receive the following wording: “the President of the Bar shall be elected for 3 years from those advocates who have 5-year professional experience. One person cannot be elected for more than two terms.”
- amend Article 44 section 1 of the Statute so that it shall receive the following wording: “the President of the Bar Union is elected for a term of 3 years from among lawyers with a length of service of at least 5 years. One and the same person may be elected president of the Bar Association for a maximum of 2 terms.”
- amend Article 41 section 2 of the Law on Advocacy so that it shall receive the following wording: “the Secretary-General shall be employed by the Bar Council on the basis of a competition for 3-year term with a possibility of one-time extension for the same term.”

- amend Article 45 section 2 of the Statute so that it shall receive the following wording: “the Secretary General is employed by the Council of the Bar Association, on a competitive basis, for a term of 3 years, which may be extended once.”

**10. The strengthening of the position of the President of the Bar – detailed recommendation to add new section 10 to Article 35 of the Law on Advocacy:**

It is recommended to add new section 10 to Article 35 of the Law on Advocacy with the following wording: “All bodies of the Bar co-operate in implementation of the Long-term Strategy and Annual Plans adopted by Congress. The President of the Bar, within framework established by the Council of the Bar, if any, decides about ways and methods of such implementation.”

### **III. Concerning the Ukrainian National Bar Association**

**1. The Chairperson of the Bar Council should not chair the congress of advocates of Ukraine – detailed recommendation to add new section 6a in Article 54 of the Law of Ukraine on the Bar and Practice of Law:**

It is recommended to add new section 6a in Article 54 of the Law of Ukraine on the Bar and Practice of Law with the following wording: “The congress of advocates of Ukraine shall be chaired by a Chairperson or Deputy Chairperson elected immediately after beginning of a congress.”

**2. The right to challenge to court should be limited only to resolutions of collective Bar bodies which constitute an administrative decision in individual matters – detailed recommendation to introduce a new section 5 to Article 57 of the Law of Ukraine on the Bar and Practice of Law:**

It is recommended to introduce a new section 5 to Article 57 of the Law of Ukraine on the Bar and Practice of Law with the following wording: “The resolutions adopted by bodies of the Bar (including results of elections), which are not administrative decisions concerning individuals, may not be challenged to court.”

**3. There should be no quorum requirement during the Second Conference of Advocates of the Region – detailed recommendation to add new section 4a in Article 47 of the Law of Ukraine on the Bar and Practice of Law:**

It is recommended to add new section 4a in Article 47 of the Law of Ukraine on the Bar and Practice of Law which may have the following wording: “However if there is no quorum then the Second Conference of Advocates of the Region shall be qualified to adopt resolutions irrespective of a number of present delegates (i. e. there is no quorum requirement during a Second Congress). The Regional Bar Council may convene the Second Conference of Advocates of the Region when it convenes the First Conference of Advocates of the Region. The Second Conference of Advocates of the Region may be convened at the same day as the First Conference of Advocates of the Region, but not earlier than 1 hour later.”

**4. The members of the Higher Audit Commission of the Bar should be given the right to request any member of any body of the Bar and its staff to handle every document and answer in writing to any questions – detailed recommendation to add new section 2a in Article 53 of the Law of Ukraine on the Bar and Practice of Law:**

It is recommended to add new section 2a in Article 53 of the Law of Ukraine on the Bar and Practice of Law with the following wording: “2a. Each member shall have the right to request any member of any body of the Bar and its staff to handle every document and answer in writing to any questions. Refusal to handle every document and answer in writing to any questions may be the ground for dismissal of any member of any body of the Bar or termination of an employment contract of the staff of the Bar.”

The above powers are already found in Article 5 section 1 of the Regulations on the Higher Audit Commission of the Bar, adopted by Congress on 9 June 2017 – but nevertheless according to European standards the act of Parliament should be a legal basis of such powers.



**5. There should be a limit of the terms of office – detailed recommendation to add new section 3 to Article 46 of the Law of Ukraine on the Bar and Practice of Law:**

It is recommended to add new section 3 to Article 46 of the Law of Ukraine on the Bar and Practice of Law which may have the following wording: “any member of any body of the Bar can be re-elected only once because the same function in the Bar can be handled for maximum two terms of office – no matter whether consecutive or not.”