



DOI: [https://doi.org/10.14505/jarle.v10.2\(40\).22](https://doi.org/10.14505/jarle.v10.2(40).22)

Independence of an Advocate in Disciplinary Proceedings: Comparative Approach with a Focus on Ukrainian Experience

Ivan V. NAZAROV

Department of Advocacy, Yaroslav Mudryi National Law University, Kharkiv, Ukraine
nazarov_ivan@ukr.net

Olena M. OVCHARENKO

Department of Advocacy, Yaroslav Mudryi National Law University, Kharkiv, Ukraine
justice.olen@gmail.com

Yana O. KOVALYOVA

Department of Advocacy, Yaroslav Mudryi National Law University, Kharkiv, Ukraine
kovalyova75@ukr.net

Yulia O. REMESKOVA

Kharkiv, Ukraine Department of Advocacy, Yaroslav Mudryi National Law University, Kharkiv, Ukraine
remeskova.yula@gmail.com

Suggested Citation:

Nazarov, I.V. *et al.* 2019. Independence of an Advocate in Disciplinary Proceedings: Comparative Approach with a Focus on Ukrainian Experience, *Journal of Advanced Research in Law and Economics*, Volume X, Spring, 2(40): 603 – 615, DOI: [10.14505/jarle.v10.2\(40\).22](https://doi.org/10.14505/jarle.v10.2(40).22). Available from: <http://journals.aserspublishing.eu/jarle/index>

Article's History:

Received 9 December, 2018; Received in revised form 11 January, 2019; Accepted 24 February, 2019;
Published 31 March, 2019.
Copyright © 2019, by ASERS® Publishing. All rights reserved.

Abstract:

This research brings a special focus on the notion of disciplinary liability of advocates, regarding their status in a legal system dedicated to universal standards of competitive fair trial. The article is based on experience of Ukraine in shaping an efficient system of the bar, with a wide comparative insight into the systems of disciplinary liability of lawyers in European countries. Universal standards of professional legal ethics are being peculiarly adverted. Safeguards of procedural independence of lawyers in disciplinary proceedings are presented regarding best European practices. It has been concluded that confidentiality is a cornerstone of professional status of a lawyer and limitations of this principal should be strictly envisaged by law. Otherwise, trustful relationships of a lawyer and his client would be challenged. Independence, due proceedings of investigation of disciplinary offences, proportionality are mentioned as basic principles on which the system of disciplinary liability of lawyers in a democratic society is being founded. Local bar associations play a leading role in protection of advocates' professional rights and shielding them from unwanted attacks of any type, including infringements of procedural rights of lawyers, coming from law-enforcement authorities.

Keywords: disciplinary liability; confidentiality of advocates' practice; bar associations; proportionality of disciplinary sanctions; competitive fair trial.

JEL Classification: D74; K15.

Introduction

According to J. Moliterno, 'In democratic societies, ... a lawyer is the guardian of the rule of law, the ideal that all people stand equally before the law and neither expect nor receive special treatment from it. In emerging democracies, this role is especially important for lawyers, who have the potential to become the great levelers between the powerful and the less so' (Moliterno and Harris 2007). Council of Bars and Law Societies of Europe defines the lawyer's role as follows: '... the lawyer, who faithfully serves his or her own client's interests and protects the client's rights, also fulfils the functions of the lawyer in Society – which are to forestall and prevent conflicts, to

ensure that conflicts are resolved in accordance with recognized principles of civil, public or criminal law and with due account of rights and interests, to further the development of the law, and to defend liberty, justice and the rule of law' (§ 6 of the Commentary on the Charter of Core Principles of the European Legal Profession) (2013). In our opinion, a lawyer must diligently serve his clients as well as protect the key values of the rule of law. Respectively, clients, entrusting his lives into lawyers' hands, are empowered to demand due fulfillment of the lawyers' duties. Disciplinary liability of a lawyer is one of the safeguards of this fragile balance; by banning undue forms of professional behavior, this procedural instrument is aimed to guide a lawyer in his relationships with a client and refrain him from unethical or illegal acts. Regarding these, the main focus of our article would be researching key aspects of disciplinary proceedings of lawyers in Ukraine and some European countries, based on such a fundamental principle of legal profession as independence.

In the modern globalized epoch an optimal balance of freedom and accountability should be reached when implementing the status of a lawyer in a competitive model of fair trial. In addition, the whole corporation of lawyers at a national level would not be self-sufficient without efficient mechanisms of internal corporative control, accompanied by reliable procedural immunities and warranties against arbitrariness, granted by state and respected by governmental officials. Key Aspects of Academic Discussion. Various aspects of legal liability of lawyers become of special significance when reviewing such European values as legal state, rule of law and independence of judges. Implementation of these universal principles had been proclaimed as a priority in most European countries, however, this cannot be achieved without an autonomous and self-sufficient bar, to which all of the practicing lawyers belong. Issues of legal liability of lawyers had been researched in legal texts primarily from two angles: first of all, regarding concepts of fundamental legal doctrine and secondly in specialized legal researches that are focused on safeguarding independence of lawyers.

Legal liability in the view of doctrinal theory of law is described as a (a) compulsory obligation, executed to endure measures of state coercion under conditions determined by law: Alekseev 1964; Lipinskiy and Musatkina 2013; (b) process of implementing sanction of a legal norm: Leyst 1981; Vitruk 2009; (c) form of embodiment of state coercion: Musatkina 2013, which is being manifested in relevant legal relationships (Senyakin 2010); (d) legal obligation of a person in his or her life, a set of requirements to actions of an individual, who should be responsible for them and bear all the consequences of these acts (Yonas 2001). It is suggested by some scholars to define the notion of 'responsibility' by pointing out the following components of its structure: (a) the subject of responsibility (the one who is accountable); (b) the due authority of responsibility (a group of individuals or a social institution to whom the subject is accountable); (c) the object of responsibility (something that is safeguarded by law through the imposition of sanctions (Lenk 1989)). Besides, direct or hidden directions of a subject of responsibility could be regarded as an essential precondition of legal liability (Rarog 1989). Disciplinary liability of lawyers is regarded as an essential part of legal liability or as a particular type of liability, with peculiarities deriving from status of the lawyer under national legislation. According to V. Zaborovskiy, 'disciplinary liability of an advocate is aimed to create due legal conditions of professional bar that endures high ethical standards and is an essential part of civil society; it is supposed to maintain institutional independence of bar and procedural activities of attorneys, including their relations with bodies of bar self-governance' (Zaborovskiy 2017). This vision of professional legal accountability seems to be original and self-sufficient.

European theory of legal liability of lawyers had produced some significant findings. Venugopal (2011) develops a concept of civil liability of lawyers, backgrounded by internationally recognized requirement of professional insurance for all the lawyers licensed at a national level. According to H. Kritzer (2017), having made a deep comparative study of professional liability of lawyers in 13 countries, emphasis that 'liability controls have received almost no attention from scholars who study legal professions' (Kritzer 2017). In contrast, several Ukrainian academicians have recently finalized their fundamental researches on various issues of legal profession, including their accountability. T. Vilchik in her research 'Advocacy as an Institution of Safeguarding of the Right for Legal Aid: A Comparative Insights of the EU and Ukrainian Legislation' (Vilchik 2015a) presents a detailed overview of professional insurance for lawyers, argues on major flaws of Ukrainian legislation on bar regarding the perspectives of European integration of Ukraine. N. Bakayanova in her monograph 'Functional and Organizational Basics of the Bar in Ukraine' (Bakayanova 2017) researches mission, functions and objectives of Ukrainian bar, describes key principles on which the associations of the advocates are founded. S. Ivanitskiy in his fundamental research 'Theoretical basics of Organization of the Bar in Ukraine: Principles and System' (2017) argues the importance of the fundamental principle of independence of the bar as a whole institution as well as procedural independence of lawyer (Ivanitskiy 2017). V. Zaborovskiy (2017) in his work 'Legal Status of a Lawyer in the Period of Transition of Civil Society and Law Rules State in Ukraine' (Zaborovskiy 2017) focuses on statutory guarantees of lawyers and develops insight into disciplinary, criminal and administrative independence of attorneys. Despite

such a variety of academic researches, a perfect consensual model of insuring statutory independence of attorneys is expected to be delivered in a long-term perspective. Regarding all mentioned above researches, we would try to present a short insight of disciplinary liability of lawyers with a special focus on safeguarding their independence in those proceedings. We would base our paper on experience of Ukraine, considering comparative perspectives of disciplinary liability of lawyers in European countries. Universal standards of professional legal ethics would be our additional focus. In our research we would use the following two groups of methods:

- methods of theoretical analysis, such as comparative review of legislation on the bar from different jurisdictions, theoretical modeling of perfect conditions for functioning of the bar and academic interpretation of legal provisions on the bar;
- methods of empirical study, based on collection and processing of practical outputs of various bar institutions on the example of Ukraine (Ukrainian National Bar Association 2013; Regional Qualification-Disciplinary Commission 2013).

1. European Standards of Disciplinary Liability of a Lawyer

Basic set of requirements for disciplinary liability of lawyers had been developed and popularized by international community, therefore they could be regarded as universal and should be implemented at the national level. These key standards include lawyer's independence, lawyer's immunity, personal responsibility of a lawyer for the quality of the legal assistance provided, and the accountability of a lawyer before bar associations. Independence of Lawyers. According to M. Vlies, President of French speaking division of Brussels' Bar, 'social development creates new invocations for lawyers, but nowadays the most important principles of legal profession, such as independence, autonomy of their associations, protection of professional secrecy, can withstand all the challenges and new political doctrines'. As this prominent lawyer assumes, 'differences in ethical standards are not fundamental, and the most important thing is the unification of lawyers who speak different languages, namely through maintenance of their organizational autonomy and independence' (Kostin 2014).

As it is provided by the Charter of Core Principles of the European Legal Profession, '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 from 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 from his or her own client if the lawyer is to enjoy the trust of third parties and the courts' (Charter of Core Principles 2013). In accordance with the French National Internal Regulations on the Profession of an Advocate, '[t]he profession of lawyer is liberal and independent profession in whatever form it is practiced' (article 1.1) and 'shall exercise [their] functions with ... independence...' (article 1.3) (Karnavas 2016). As Karnavas states, 'the German Rules of Professional Practice instruct lawyers to protect their clients from the state and administration authorities which may violate their rights' (Karnavas 2016). The German Rules of Professional Practice provide that a lawyer 'exercises his profession freely, independently, as a member of a self-determined and self-regulated profession, subject only to the law and the Rules of Professional Practice' (Rules of Professional Practice 2018).

As Ukrainian researcher Zaborovskiy fairly points out, 'the proper maintenance and realization of human rights and freedoms (which, according to Article 3 of the Constitutions of Ukraine, must determine the content and direction of the state) could be possible only if absolute independence of legal profession from the state is safeguarded' (Zaborovskiy 2017). Another academician Ivanitskiy develops this thought, pointing out that this principle includes also 'independence of an advocate from clients, from personal prejudices, from institutions of civil society, from bosses at advocates' corporations and bodies of advocates' self-governance' (Ivanitskiy 2017). Referring to the Code of Conduct for Lawyers in the European Union, it's been envisaged that 'The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge' (§ 2.1.1.) (Code of Conduct 1988). In accordance with § 43 of the Code of Lawyers Ethics of the Republic of Poland, 'a lawyer is obliged to protect the interests of his client in a courageous and noble way, with respect and courtesy to treat the court and other organs, regardless of his personal benefits as a result of such treatment of himself or another person' (Code of Ethics of Attorneys 2011).

For countries, where democratic values are in a state of development and establishment, precedents of violation of the fundamental principle of the independence of the lawyer, in particular, attacks on lawyers, threats to their property and personal interests, imposing disciplinary penalties on lawyers who are autonomous, principled and active, are quite typical. Therefore, we agree with the opinion of T. Kovalenko, who observes that 'rising number of attempts to put lawyers under strict authoritarian control is an unacceptable tendency for the rule of law and civil

society. Consequently, it is truly and necessary that lawyers who violate the key rules of conducting legal practice or neglect their contractual obligations or ignore accepted moral standards of the bar, should be brought under disciplinary liability' (Kovalenko2010).

In our opinion, independence of bar as well as independence of an individual lawyer should be regarded in several dimensions: (a) in terms of status of the bar in society as an independent professional self-governing entity, the lawyer is an integral part and a full member of this community, endowed with full range of statutory rights and obligations; (b) from the point of view of relationships between the lawyer and the client, the lawyer is a representative and a defender of the rights and legitimate interests of his client, preserving independence from any private entities, state authorities, law enforcement agencies and their officials. The latter are not entitled to force the lawyer commit any kind of action, directed against his client. Independent procedural status of a lawyer could be reached by providing due guarantees for running legal practice in national legislation.

An imperative of safeguarding the lawyer's immunity origins from international standards of the bar. According to §§ 16, 20 of the Basic Principles on the Role of Lawyers (1990) Governments shall ensure that lawyers' ... shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics; Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority' (Basic Principles on the Role of Lawyers 1990). Regarding assertion of this principle, there is an important judgment of the European Court of Human Rights (further we will use the abbreviation ECHR for European Court of Human Rights) 'Morris v. France' dated from April 23, 2015, in which the Court protected the lawyer's right to secure interests of a client by means of media and draw attention of the public to shortcomings of justice. As follows from the decision of the ECHR, Mr. Morice, performing his functions of a defender a criminal case, encountered a cassette with a video recording in an envelope bearing the inscription by two judges, addressed to the prosecutor, that had not been attached in the case as evidence.

Mr. Morice filed a complaint on the judges regarding those facts and published an article in the daily newspaper Le Monde, which, according to the French courts, contained defamatory statements and tarnishing the good name and reputation of the two judges at issue. Meanwhile the attorney had been found guilty of defamation in a criminal proceeding but launched the appeal proceedings. In 2015 the Grand Chamber of the ECHR found that Mr. Morice had expressed value judgments with a sufficient factual basis and that his remarks, concerning a matter of public interest, had not exceeded the limits of the right of freedom of expression. Therefore, it considered the lawyer's conviction for defamation of two investigative judges as a breach of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Defining the role of lawyers, the ECHR emphasized that 'Lawyers ... are protagonists in the justice system, directly involved in its functioning and in the defence of a party. They cannot therefore be equated with an external witness whose task it is to inform the public' (§ 148); ... a lawyer should be able to draw the public's attention to potential shortcomings in the justice system; the judiciary may benefit from constructive criticism' (§ 167). Overall, the Court concluded that that the judgment against Mr. Morice for defamation was a disproportionate interference with his right to freedom of expression and was not therefore 'necessary in a democratic society' (Moricev. France 2015; Høedt-Rasmussen and Voorhoof 2015).

National legislation reproduces similar positions. Among the most important guarantees, provided for lawyers, there is the prohibition to require from a lawyer any disclosure of information concerning his clients; the lawyer cannot be questioned as a witness on these issues (§ 2 of part 1 of article 23 of the Law of Ukraine 'On Advocates and Advocates' Practice') (On Advocates and Advocates' Practice 2012). This provision is also embodied in the procedural law; it is supplemented by the clause of part 3 of article 34 of the Law of Ukraine 'On Advocates and Advocates' Practice', according to which 'A judgment by a court or another body passed against a client of the attorney, or reversal or modification of a judgment by a court or another body passed in a case in which the attorney provided legal defense, representation or other types of legal services shall not be the grounds for disciplinary liability of the attorney provided that no misconduct was involved' (On Advocates and Advocates' Practice 2012). In accordance with part 6 of article 55 of the Constitution of Ukraine, everyone has the right, by any means not prohibited by law, to protect their rights and freedoms from violations and unlawful infringements. Such protection is provided by representatives of the bar that enjoy monopoly in this sphere. Taken together, these provisions form the content of lawyers' procedural immunity which excludes their liability for conducting lawful professional activities, aimed at comprehensive protection of interests of the client.

Similar rules are incorporated in the legal acts of European countries. For instance, the Code of Conduct for Lawyers in the European Union provides that 'The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State'

(§ 2.3.1) (Code of Conduct 1988). In most of the European countries the advocates' immunity is timeless and covers all the aspects of relations with clients until the client gives his consent to unveil the information. However, recently there has been a wide discussion between academicians and practitioners on the scale of the advocates' immunity and the urgent need to impose limitation on it. One of the key restrictions refers to disciplinary proceedings whereas lawyer accused of an offence, can disclose the information concerning his clients before the disciplinary authority, regarding or sometimes regardless a client's consent. This issue is mostly undisputable, unlike other cases of information disclosures, such as preventing financing of terrorists and fighting money-laundering.

Advocates have been traditionally critical to reporting on illegal acts of clients to law-enforcement bodies while newly adopted ethical regulations do oblige them to do so in particular cases. The necessity of restricting lawyers' immunity in cases of controlling and preventing money laundering and financing terrorism arises from the European Union regulations (On the Prevention of the Use of the Financial System 2015) national legislation (On Advocates and Advocates' Practice 2012) and forces legal researchers: Ivanitskiy 2017; Mollo 1894; to give due credit to the concept of partial limitations of the lawyers' confidentiality for the sake of social interests. It should be also regarded that in opinion of the Council of Bars and Law Societies of Europe, '...the level of protection of professional secrecy or legal professional privilege afforded by law must always be of the highest level, regardless of whether the surveillance measure is undertaken for the purpose of law enforcement (e.g. by police and judicial services) or for the protection of national security (e.g. by national intelligence agencies)' (CCBE Recommendations 2016).

In our opinion, the principle of confidentiality is the one of cornerstones of fiduciary relationships of a lawyer and a client, substantial restriction of which is a dangerous tendency, that may result in various violations of client's interests and may undermine citizens' trust in legal profession as well as authority of justice. This thesis is confirmed by numerous attempts by some European countries to protect the principle of confidentiality of lawyers, in violation of direct instructions of the European Union authorities regarding obliged lawyers to report on cases of preparation of terrorist acts and suspicions of money laundering (Vilchik 2015b). One cannot ignore and covert 'sabotage' by lawyers who, despite the legally mandated obligation, are reluctant to disclose confidential information of clients. Taking into account the need to protect social and state interests, cases of restriction of lawyer's confidentiality should be conditioned only by extremely dangerous social phenomena (such as terrorism, corruption), and grounds and procedures for them should be regulated in detail by law.

1.1. Accountability of a Lawyer before Bar Associations

In legal theory there are two major concepts of liability: the one stands for inevitability of inputting sanctions upon those who maliciously break law provisions, the other one includes obligation of a person or a public figure to comply with legal and corporate rules, adopted by a state or a professional association (Baulin 2013). Therefore, compliance with universal and national rules of the bar are compulsory for lawyers; they undertake personal responsibility for preserving professional dignity, honesty and diligence. Of course, a lawyer may choose not to do so, but in that case under the Code of Conduct for Lawyers in the European Union 'a lawyer shall undertake personal responsibility for the discharge of the instructions given to him' (§ 3.1.2) and 'subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession (§ 2.7.)' (Code of Conduct 1988).

According to §§ 14 and 15 of Basic Principles on the Role of Lawyers (1990) 'Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession; Lawyers shall always loyally respect the interests of their clients' (Basic Principles on the Role of Lawyers 1990). Similar rules are implemented into national legislation. According to article 6 (1, 2) of the Rules of Professional Conduct and the Rules of Competition of Lawyers of the Czech Republic 'The justified interests of the client shall take priority over the lawyer's own interests and his respect to other lawyers. The lawyer shall proceed cases assigned to him by the court or appointed by the Bar with the same conscientiousness and care as cases of other clients' (Rules of Professional Conduct 1996). Similar provisions are envisaged by Ukrainian legislation on the bar and the Rules of Advocates' Ethics (Rules of law ethics 2017). As M. Karnavas notes, 'all of the [ethical] codes contain provisions requiring competence in handling client's case, dedication in defending the clients' interests, commitment preventing lawyers to withdraw and abandon the case without serious justifying reasons' (Karnavas 2016).

According to M. Quafishen, lawyers are bound by a set of obligations, that can be classified in three categories: one relates to the honor of profession, the second to the lawyer-client relationship. And the third to the

relations with fellow lawyers and the Bar Association (Quafishen 2018). Those obligations are provided by the legislation on bar and codes of professional ethics and include compliance of a lawyer with national legislation and codes of bar ethics, respect for the terms of the contract, concluded with the client, nondisclosure of confidential information. Some European codes of bar ethics specify a special rule for lawyers to avoid using illegal tools when defending a client, such as bribing a judge or another official, cheating or causing another damage to the opposite party et. However, it is always a personal choice of a lawyer which methods he or she practices, and this is an issues of his or her personal dignity and reputation. Another important issue is the quality of work, provided by advocates. Our research had revealed that only a few jurisdictions worked out guidelines for assessment of the lawyers' services. Those issues mostly arise when there is a dispute between a lawyer and his clients, who have not been satisfied with the performance of the attorney. National associations are being reluctant to set up strict quality standards for attorneys.

Regarding personal responsibility of a lawyer to perform diligently, the European Court of Human Rights in the case 'M.S. v. Croatia' proclaimed that it 'would not be sufficient merely to assign a legal representative to a person; such a representative should effectively represent that person and effectively oppose any measures which the person resisted' (§ 137) (M.S. v. Croatia 2015). In the mentioned case a lawyer, assigned by state to a person, striving from mental health disabilities, who had been involuntary hospitalized, failed to provide due legal aid to his client. The Court explained, that due support from the lawyer in such a case '...almost always required that the representative meet in person those whom they were representing in order to facilitate effective communication, to support the person's understanding of their rights and to ensure that the representative understood the person's will and preferences when representing him or her. ... In some cases, merely meeting with the person would not be sufficient; representatives should be acquainted with specialist methods of securing support for those with communication impairment (§ 137)' (M.S. v. Croatia 2015). In our opinion, national professional associations should be more active in working out standards of attorneys' professional performance; more control should be provided by those associations concerning the quality of advocates' work. Such regulations must be incorporated into rules of bar ethics and their compliance must be controlled through the measures of disciplinary liability and other instruments. This is really necessary for countries of new democracies, such as Ukraine, where traditions of professional dignity and diligence are still being formed. National bar associations should stand for nurturing the idea of personal responsibility of all of the advocates, belonging to the bar.

1.2. Responsibility of Lawyers before Professional Associations

Overview of European legislation leads to the conclusion that there are two major approaches to formation of bodies that impose disciplinary sanctions on lawyers. This function is performed either by specialized judicial bodies (Poland) or by the bar associations (Ukraine). This fact testifies to the correctness of the positions of those scholars, which classify the responsibility of the lawyer as professional responsibility (Melnychenko 2010; Kuhar 2012). In Georgia the Ethics Commission of the Bar Association shall commence disciplinary proceedings against an advocate. This Commission is elected by General Assembly of the Georgian Bar Association (articles 24, 33 of the Law of Georgia 'On the Advocates') (Law of Georgia 'On the Advocates' 2004). In France, the Bar association is responsible for adjudicating misconduct proceedings. Each local Bar association has a council carrying out disciplinary functions (Karnavas 2016). In Ukraine, most of cases of advocates' misconduct are heard before regional qualification-disciplinary committees of advocates, whereas their decisions can be appealed before the Higher qualification-disciplinary committees of advocates of Ukraine. Before 2012 such committees included representatives of judicial and executive bodies, while the Law of Ukraine 'On Advocates and Advocates' Practice' had strengthened lawyers' autonomy, excluding other legal professions from disciplining advocates. Besides the qualification-disciplinary committees, courts in Ukraine have some competence in cases of bringing advocates under criminal or civil liability whenever those precedents do not include disciplinary offences.

In some EU countries lawyers can only by disciplined by judicial authorities. In Germany, disciplinary matters are dealt with in the first instance by the Rechtsanwaltskammern (Regional Bars), which are self-regulatory bodies supervised by the Ministry of Justice of the particular land to which they belong. All decisions related to the conduct or discipline of lawyers may be referred to the special disciplinary courts. Lawyers, against whom charges are brought, may appeal to these courts. The disciplinary courts are part of a special jurisdiction hearing lawyers' cases (disciplinary matters as well as questions of admission). This jurisdiction consists of the Anwaltsgericht (Lawyers' Disciplinary Court), the Anwaltsgerichtshof (Higher Lawyers' Court) and the Senat für Anwaltssachen beim Bundesgerichtshof (Senate for Matters Concerning the Legal Profession at the Federal Supreme Court).

The panels of these courts consist of either practicing lawyers (Lawyers' Disciplinary Court) or both practicing lawyers and professional judges (Higher Lawyers' Court and Senate for Matters Concerning the Legal

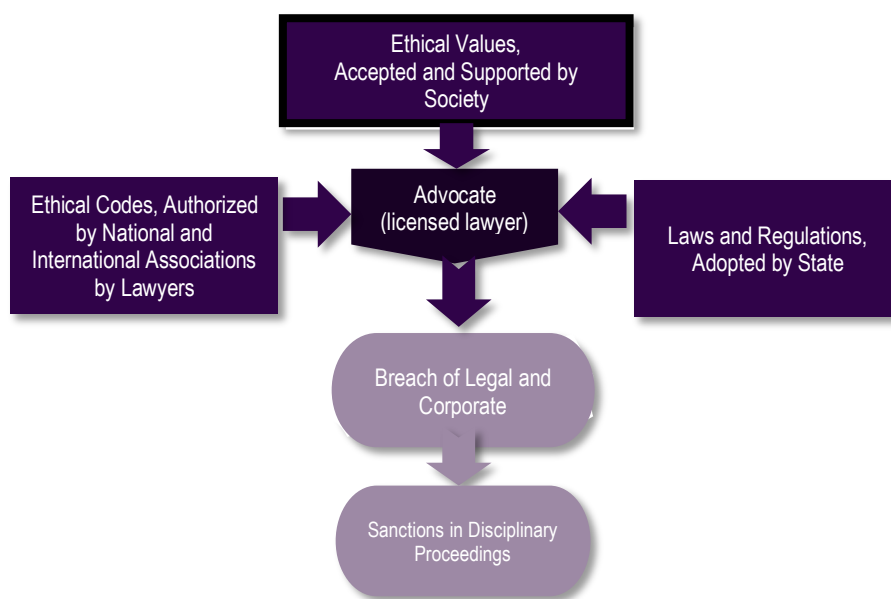
Profession at the Federal Supreme Court). Only at the Senate for matters concerning the Legal Profession at the Federal Supreme Court the majority of the judges are professional judges (Summary of Disciplinary Proceedings 2016). In Greece, the disciplinary boards are convened at the headquarters of any civil appeal court which try disciplinary offenses at first instance. The lawyer, upon whom disciplinary sanctions have been imposed, apart from recommendation and reprimand, is entitled to appeal to the Supreme Disciplinary Board within 30 days from the decision's communication to him, which delivers a judgment within 2 months from the lodge of the appeal (Summary of Disciplinary Proceedings 2016).

Our research has revealed that in most European countries advocates are disciplined by self-government bodies of advocacy, comprised mostly or exclusively by licensed lawyers. Some jurisdictions include two-staged disciplinary procedure, when the decision of the first instance (regional) commission can be revised by the highest self-government body of advocacy. In some countries, decisions of such bar committees can be appealed to courts of general jurisdiction. Regarding the European Court of Human Rights precedents in a matter of professional disciplinary proceedings, in 'Albert and Le Compte v. Belgium' case the Court considered it unnecessary to give a ruling on the matter, having concluded that the proceedings fell within the civil sphere. It stressed, however, that the two aspects, civil and criminal, of Article 6 are not necessarily mutually exclusive (§ 30) (Case of Albert and Le Compte v. Belgium 1983). However, in 'Oleksandr Volkov v. Ukraine' case, the Court stresses on importance of fair trial proceedings against a judge (§§ 87-95) (Case of Oleksandr Volkov v. Ukraine 2013). Whichever the cases are, in our opinion, fair standards of civil trial, envisaged in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, should be applicable to national authorities, disciplining lawyers.

2. Ethical Component of Disciplinary Responsibility of a Lawyer

The Code of Conduct for European Lawyers (1988) provides that 'Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognized as essential in all civilized societies' (§ 1.2.1) (Charter of Core Principles 2013; Code of Conduct 1988). According to the position of International Bar Association, 'A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the Court, his or her colleagues and all those with whom he or she comes professionally into contact' (General Principles for the Legal Profession 2006). According to Moliterno, 'disciplinary sanctions upon advocates should be applied by bar associations and law societies, which represent their self-governance' (Moliterno and Harris 2007), backgrounded by the notion of bar independence. As Zippelius notes, 'when ethical notions are regarded apart from legal regulations, they can be interpreted as social rules, deprived of any legal meaning and therefore deprived of imperative official authority' (Zippelius 2004). In our opinion, codes of bar (lawyers') ethics, adopted by bar associations, are special due to unique combination of moral values, on which they are based, their official status, embodied in legal obligations of all members of the bar to comply with the code, and availability of professional control, provided by bar associations in case of misconduct. Our vision of the core essence of codes of bar ethics is presented on the Figure 1 below.

The grounds for disciplinary liability of a lawyer are usually provided by the law on status of the bar, which may include references to the codes of lawyer's ethics. According to part 2 of article 34 of the Law of Ukraine 'Advocates and Advocates' Practice' grounds of disciplinary liability of attorneys include: (a) non-compliance with the requirements as regards incompatibility; (b) violation of the oath of attorney of Ukraine; (c) violation of the rules of professional conduct; (d) disclosure of attorney-client privilege or performance of actions that resulted in the disclosure thereof; (e) failure to perform or to properly perform his/her professional duties; (f) failure to comply with the decisions taken by the bodies of attorneys' self-government; (g) violation of other attorney's duties provided for by law (On Advocates and Advocates' Practice 2012). As it is envisaged in article 80 of the Law of Republic of Poland 'On the Bar', lawyers and apprentices (interns) could be subjected to disciplinary responsibility for behavior contrary to the law, rules of ethics or dignity of the profession, or for breach of their professional duties, as well as lawyers – for failure to fulfill an insurance contract (The right to a lawyer 1982). Under the Law of Georgia 'On Advocates' disciplinary responsibility shall be imposed on an advocate for: (a) Non-fulfillment of duties foreseen under Articles 5-9 of the present Law; (b) Violation of the code of professional ethics of advocates (article 32) (Law of Georgia 'On the Advocates' 2004).

Figure1. Codes of Bar Ethics and Professional Control

Under Code of Conduct of the Spanish Bar the lawyer shall not proceed to unfair gaining of clients, which includes prohibition of such acts as: (a) The use of direct or indirect advertising procedures contrary to the provisions of the General Advertising Act and to the specific rules on advertising provided in this Code of Conduct and any other supplementary rule; (b) All direct or indirect practice in order to gain clients that puts people's dignity or lawyers' social function at risk; (c) The use of third parties like the way to avoid deontological duties; (d) The receipt or payment of considerations by infringement of legal rules on competence and the rules in this Code of Conduct (Code of Conduct 2001). According to article 21 of the Bar Act of Slovenia incompatible with legal profession are: (a) Practicing of other job, save in the fields of science, teaching, art or journalism; (b) Practicing of paid civil service; (c) Running of a notary's office; (d) Belonging to the executives of the company; (e) Performance of other jobs contrary to good reputation and independence of the legal profession (Bar Act of Slovenia 1993). Our research has shown that legislation of some European countries does not provide with a complete list of disciplinary offenses of lawyers, referring to their duties, lawyers' adherence to the rules of corporate ethics or general principles of the bar. Accordingly, the violation of these rules could be regarded by the bar authorities that impose disciplinary sanctions as grounds for disciplinary liability. In such jurisdictions, the bar associations are entitled with a wide discretion regarding the interpretation of unlawful acts of lawyers.

Our research included analysis of the disciplinary practice, delivered by the bar associations and courts in Ukraine. In particular, we have identified the most typical cases of undue conduct of lawyers, for which they could be punished: (a) Groundless delay of the case in order to obtain higher fees; (b) The position of a lawyer in a case does not contradict the law, but is incompatible with moral values. For example, an attorney of a rapist in a rape criminal case is making attempts to discredit the victim, and trying to unveil examples of her frivolity or undue conduct; (c) Forcing the client to give deliberately false testimony; (d) Publicly proclaimed doubts about the authenticity of information and documents originating from the client; (e) Failure of court sessions due to the lawyer's fault, delays, unspeakable statements regarding the judge and other participants in the proceedings; (f) Making secret (corrupt) bargains with the prosecution or the judge; (g) Passive position of a lawyer in the trial, the failure to submit petitions, in order not to annoy the judge; failure to act in the best interests of his clients; (h) Use of lies, deception, giving of illegitimate or unfulfilled promises, playing low feelings (revenge or benefit), initiating conflicts (Ukrainian National Bar Association 2013; Regional Qualification-Disciplinary Commission 2013).

Consequently, we can conclude that all the grounds for disciplinary liability of lawyers are based on the norms of corporate ethics and are leaned by them. Most of the cases of misconduct, admitted by attorneys, could be simultaneously regarded as violations of basic principles lawyer's ethics. The core idea of distinguishing of such type of legal responsibility of a lawyer as his disciplinary responsibility is guaranteeing of the fundamental principle of independence of the bar. This aim is reached by formulating concrete basics of disciplinary misconduct, procedure of investigation of such cases and imposition of sanctions that are proportionate and fair. In our opinion,

to maintain the legitimacy of the bar discipline, it is required to clearly define in the law the list of unlawful acts that make up its basis.

2.1. Procedural Aspects of Disciplinary Responsibility

In accordance with §§ 27-29 of Basic Principles on the Role of Lawyers (1990) charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review. All disciplinary proceedings shall be determined in accordance with the code of professional conduct (Basic Principles on the Role of Lawyers 1990). As it has been noted by Vilchik, the state's obligation to protect lawyers from unfair or arbitrary disciplinary prosecution is rooted in the doctrine of international human rights law' (Vilchik 2015a).

The obligatory requirement to ensure a fair trial, as enshrined, in particular, in article 14 of the International Covenant on Civil and Political Rights (International Covenant on Civil 1966) and in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention for the Protection 1950), provides for compliance with procedural standards of fair trial from bar associations authorized to discipline lawyers in disciplinary proceedings. In USA disciplinary proceedings are considered neither civil nor criminal but *sue generis*. Nevertheless, the license to practice law could not be taken away without observance of due process guarantees, that include fair notice of the charges, right to counsel, right to cross-examine witnesses, right to present arguments to the adjudicators, right of appeal; and right to subpoena and discovery (Rules 11, 14 and 15 of the Model Rules for Lawyer Disciplinary Enforcement of American Bar Association) (Model Rules 1989).

Study of the European legislation regulating procedures of application of disciplinary sanctions upon lawyers is aimed to outline the basic model of disciplinary proceedings, which must ensure due guarantees of their statutory independence (Summary of Disciplinary Proceedings 2016). First of all, decisions on imposing sanctions upon lawyers must be taken in compliance with principles of independence, impartiality, publicity, and other elements of fair trial procedure. Disciplinary proceedings may be initiated if a lawyer failed to perform his duties effectively and properly, or committed acts that repudiate the reputation of the bar. The right to file a complaint against a lawyer should belong to his client, as well as other persons who are aware of the violations of the lawyer's duties or the code of corporate ethics. The abuse of the right to file a complaint against a lawyer, without sufficient grounds, and the use of the said right as an instrument to pressure the lawyer in connection with his advocacy activities cannot be tolerated. For instance, such a rule is provided by part 2 of article 36 of the Law of Ukraine On Advocates and Advocates' Practice.

Secondly, the initial stages of disciplinary proceedings must be carried out confidentially, otherwise another important principle – the presumption of innocence – will be violated. When investigating alleged violations, representatives of the authorities, conducting disciplinary proceedings should take appropriate measures to ensure that the lawyer's secret is not disclosed. Competition in disciplinary proceedings should be reached by safeguarding the right of an advocate to respond, the opportunity to provide evidence of his defense, his presence during disciplinary proceedings, the right to present his interests in disciplinary proceedings with the assistance of another lawyer. These proceedings should be conducted publicly, with exceptions regarding the need to provide a lawyer's secret or other classified information, protected by law, or upon a motivated petition of an attorney. Decisions, imposing disciplinary sanctions upon lawyers, must be motivated. Final decisions of the bar disciplinary authorities should be published and subjected to judicial review.

In our opinion, the disciplinary proceedings should be modelled according to the standards of fair trial, stipulated in paragraph 1 of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This idea could be confirmed by national experience of such countries as Germany, Czech Republic, Finland, Latvia, Ukraine. At the same time, for authorities that impose disciplinary sanctions upon lawyers, it is important to exercise powers, granted to them, in a rational and proportional manner, avoiding arbitrariness and maintaining the high creditability of the bar in the society. For countries with unstable democratic values that are at the stage of formation (Ukraine, Georgia, Moldova), the issue of preventing unreasonable punishment of attorneys, initiated by law-enforcement bodies in order to put them under illicit pressure, is being very tangible. Independent and principled attorneys become targets for such attacks for various reasons. However, the response of the bar associations in such cases should be rigid and immediate. Otherwise, procedural independence of a lawyer would have become an apparition.

2.2. The Problem of Ensuring the Proportionality of Sanctions Imposed on A Lawyer

Proportionality of sanctions, imposed upon lawyers for all types of misconduct (On the Freedom of Exercise 2000), is conventionally reported as a universal principle of the bar. In the decision of European Court of Human Rights in 'Oleksandr Volkov v. Ukraine' case the importance of balancing with proportionality when imposing disciplinary sanctions upon judges had been emphasized (§ 182) (Case of Oleksandr Volkov v. Ukraine 2013). According to A. Biryukova, 'this principle includes: (a) a comprehensive and unambiguous list of grounds for bringing a lawyer to disciplinary responsibility; (b) sufficient variety of disciplinary sanctions, graded proportionally according to the degree of severity; (c) clear criteria for the imposition of a disciplinary sanction' (Biryukova2019).

T. Vilchik emphasizes that proportionality under Ukrainian legislation gives a rise to variety of disciplinary sanctions (Vilchik 2015c), among them are: (a) warning; (b) suspension of the right to practice law for a period from one month to one year; (c) for Ukrainian attorneys - disbarment with further exclusion from the Unified Register of Attorneys of Ukraine, and for attorneys of foreign states - exclusion from the Unified Register of Attorneys of Ukraine (part 1 of article 35 of the Law of Ukraine 'On Advocates and Advocates' Practice') (On Advocates and Advocates' Practice 2012). Those sanctions can be imposed upon advocates by regional qualification-disciplinary commissions of advocates and the Highest qualification-disciplinary commission of advocates. However, some analytics (Zadoya 2014; Zaborovskiy 2017) stand for extension of the existing types of disciplinary sanctions for lawyers and recommend introducing such new types of sanctions as a ban on training interns and a monetary fine from 1000 to 10,000 thousand. In the case 'Oleksandr Volkov v. Ukraine' the European Court of Human Rights admitted that two types of punishment for judges (dismissal for breach of the oath and reprimand) are not sufficient and such a situation could be regarded as a serious violation of the balance of proportionality (§ 182) (Case of Oleksandr Volkov v. Ukraine 2013).

An overview of the relevant European experience could be an advantage. For example, for acts that abuse the high status of an Austrian lawyer, such sanctions may be imposed by the local Bar Chamber: (a) a written reprimand; (b) a fine of up to 45 thousand euros; (c) a ban to practice law for up to one year; (d) an exclusion from the list of lawyers. Temporary measures of disciplinary liability of lawyers include: monitoring of his activities by a Disciplinary or Lawyer's Chamber; a ban on conducting activities in certain or in all courts, prosecutor's offices or other authorities; temporary prohibition on training of interns (candidates for advocates) (Richtlinien Für Die Ausübung 2016). In Finland Disciplinary Commission of the Bar is entitled to impose a fine of not less than 500 euros and not more than 15 thousand euros (Advocates Act 2005). According to article 81 of the Law of the Republic of Poland 'On Advocacy' (1982) such types of disciplinary sanctions may be imposed upon advocates: (a) warning; (b) reprimand; (c) fine; (d) suspension of professional activity for a term from three months to five years; (e) exclusion from the bar. Besides, such additional sanctions may be imposed as (a) ban for exercising patronage for a term from one to five years and (b) suspension from professional activities for a term from two to ten years (The right to a lawyer 1982).

Conclusions

Regarding best European practices, we have come to the conclusion that legislation should provide with a wide array of disciplinary sanctions for a lawyer, including warning, monetary fine, suspension from professional activity for a certain period, complete deprivation of the right to practice law. Disciplinary sanctions of two types should be envisaged by laws on status of bar, classified as major or additional ones. When choosing sanctions, the bar association or another authoritative body should take into account a bunch of circumstances, such as gravity of violation committed by the lawyer, circumstances of the case, personal attitude of the lawyer towards the fact of misconduct, compensation of damage, caused to the client. Only in this case will the principle of proportionality be achieved, and the overall positive image of the bar in society will be maintained.

The main purpose of disciplinary responsibility of lawyers is to ensure a balance between the principles of independence of the bar and professional control over observance of the duties and rules of corporate ethics by lawyer's. Regarding processes of European integration, national systems of disciplinary responsibility of lawyers are challenged by significant influence of universal and European values, embodied in recommendations of international bar associations and mandatory intergovernmental agreements. Procedure of disciplinary liability of lawyers should be based on key principles of due legal proceedings, stipulated in clause 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely: independence, due investigation of misconduct, proportionality. Proper protection of information, secured by the principle lawyers' confidentiality, must be provided in the course of disciplinary liability. Basis for restrictions of lawyer's confidentiality should be clearly defined by law and detailed in procedural guarantees. Exceptional cases of disclosure of

confidential information could be justified by cases of protection of interests of society, such as counteracting terrorism or laundering money, obtained from criminal activity.

References

- [1] Advocates Act. 2005. No 496/1958. The Finnish Bar Association. https://www.finlex.fi/en/laki/kaannokset/1958/en19580496_20040697.pdf.
- [2] Alekseev, S.S. 1964. *General Theory of Socialist Law*. Sverdlovskiy Yuridicheskii Institut.
- [3] Bakayanova, N.M. 2017. *Functional and Organizational Basics of the Bar in Ukraine*. Yurydychna Literatura.
- [4] Bar Act of Slovenia. 1993. Official Gazette of the Republic of Slovenia (Uradni list). No 18-817/1993 of 9th April 1993. <http://www.odv-zb.si/en/regulations/bar-act>.
- [5] 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. 1990. <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.
- [6] Baulin, Y.V. 2013. *Legal Liability: Issues of Exclusion and Dismissal*. VD Kalmius.
- [7] Biryukova, A.M. 2019. *Legal Status of a Lawyer and Advocate: A Domestic Model in the Context of Globalization Processes*. Nauka.
- [8] Case of *albert and le compte v. Belgium*. 1983. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%2201-57422%22%7D>.
- [9] Case of *Oleksandr Volkov v. Ukraine*. 2013. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%2201-115871%22%7D>.
- [10] CCBE Recommendations: On the protection of client confidentiality within the context of surveillance activities. 2016. Council of Bars and Law Societies of Europe. https://www.ccbe.eu/NTCdocument/EN_surveillance_reco1_1469525991.pdf.
- [11] Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyer. 2013. CCBE, Brussels. [http://unba.org.ua/assets/uploads/legislations/inshidokumenty/kodeks_povedinky_yevropeyskykh_advokativ\(orig\).pdf](http://unba.org.ua/assets/uploads/legislations/inshidokumenty/kodeks_povedinky_yevropeyskykh_advokativ(orig).pdf).
- [12] Code of Conduct for Lawyers in the European Union. 1988. CCBE. https://www.idhae.org/pdf/code2002_en.pdf.
- [13] Code of Conduct of the Spanish Bar. 2001. https://www.ccbe.eu/NTCdocument/Spain_EN_Codigo_deon1_1251981686.pdf.
- [14] Code of Ethics of Attorneys. 2011. <http://unba.org.ua/assets/uploads/legislations/pologennya/kodeks-etyki-advokackiej-ukr.pdf>.
- [15] Convention for the Protection of Human Rights and Fundamental Freedoms. 1950. Council of Europe. https://www.echr.coe.int/Documents/Convention_ENG.pdf.
- [16] General Principles for the Legal Profession Adopted by the International Bar Association. 2006. https://www.icj.org/wp-content/uploads/2014/10/IBA_International_Principles_on_Conduct_for_the_legal_prof.pdf.
- [17] Høedt-Rasmussen, I., and Voorhoof, D. 2015. A great victory for the whole legal profession. *Strasbourg Observer*. <https://strasbourgoobservers.com/2015/05/06/a-great-victory-for-the-overall-profession-of-lawyers/>.
- [18] International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
- [19] Ivanitskiy, S.O. 2017. *Theoretical Basics of Organization of the Bar in Ukraine: Principles and System*. Interservice.
- [20] Karnavas, M.G. 2016. *Lawyer's Ethics*. OSCE Mission to Skopje.

- [21] Kostin, A. 2014. Independence of the bar: Europe against regulation or beyond? Paper presented at the IXth Bar Leaders' Conference, held by International Bar Association, May 21-24, in Brussels, Belgium.
- [22] Kovalenko, T.S. 2010. *Disciplinary Liability of a Lawyer*. Nauka.
- [23] Kritzer, H.M. 2017. Lawyers' professional liability: comparative perspectives. *International Journal of the Legal Profession* 24(2): 73-89. DOI: [10.1080/09695958.2016.1223673](https://doi.org/10.1080/09695958.2016.1223673).
- [24] Kuhar, A.V. 2012. Professional responsibility of a lawyer: concept, form and place in the system of legal liability. *Scientific Herald of the National University of Bioresources and Nature Management of Ukraine* 173(1): 63-72.
- [25] Law of Georgia 'On the Advocates'. 2004. No 970 of 29 December 2004 – LHG I, No 6, 19.1.2005, Art.55. https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Georgia_The-Law-of-Georgia-on-Advocates.pdf.
- [26] Lenk, H. 1989. *Responsibility in Technology, for Technology, with the Help of Technology*. Progress.
- [27] Leyst, O.E. 1981. *Sanctions and Liability under Soviet Law (Theoretical Problems)*. MGU Publishing.
- [28] Lipinskiy, D.A., and Musatkina, A. A. 2013. *Legal Liability, Sanctions and Protection Measures*. RIOR, INFRA-M.
- [29] M.S. v. Croatia. 2015. Judgement of Grand Chamber of the European Court of Human Rights from 19 February 2015. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-152259"\]}](https://hudoc.echr.coe.int/eng#{).
- [30] Melnychenko, R.G. 2010. *Professional Responsibility of a Lawyer*. Nauka.
- [31] Model Rules for Lawyer Disciplinary Enforcement. 1989. https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/.
- [32] Moliterno, J., and Harris, G. 2007. *Global Issues in Legal Ethics*. West Academic Publishing.
- [33] Mollo, M. 1894. *Rules of Legal Profession in France*. Tovarishchestvo skoropechaty.
- [34] Morice v. France. 2015. Judgement of Grand Chamber of the European Court of Human Rights from 23 April 2015, application no. 29369/10. http://www.menschenrechte.at/orig/15_2/Morice.pdf.
- [35] On Advocates and Advocates' Practice. Law of Ukraine 2012. Article 22. 2012. <https://zakon.rada.gov.ua/laws/show/5076-17>.
- [36] On the Freedom of Exercise of the Profession of Lawyer: Recommendation No Rec 2000 (21) of the Committee of Ministers to Member States. Adopted by the Committee of Ministers on 25th October 2000. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d0fc8.
- [37] On the Prevention of the Use of the Financial System for the Purposes of the Money Laundering of Terrorist Financing. 2015. Directive 2015 /849 of the European Parliament and of the Council of 20 May 2015. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>.
- [38] Quafishen, M.M. 2018. A century of the law profession in Palestine: quo vadis? *International Journal of the Legal Profession* 25(2): 175-212. DOI: [10.1080/09695958.2018.1442635](https://doi.org/10.1080/09695958.2018.1442635).
- [39] Rarog, A.I. 1987. *Wine in Soviet Criminal Law*. Izdatelstvo Saratovskogo Universiteta.
- [40] Regional Qualification-Disciplinary Commission of Advocates. 2013. <https://vkdkka.org/en/17-18-october-2013-higher-qualification-and-disciplinary-bar-commission-holds-its-regular-meeting/>.
- [41] RichtlinienFür Die Ausübung Des Rechtsanwaltsberufes (RL-BA 2015). – Stand: 1.1.2016. 2016. https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/DE_Austria_Rechtlinien_fuer_Ausuebung.pdf.
- [42] Rules of law ethics. 2017. Approved by Congress of Advocates on June 9th 2017. http://unba.org.ua/assets/uploads/legislation/pravila/2017-06-09-pravila-2017_596f00dda53cd.pdf.
- [43] Rules of Professional Conduct and the Rules of Competition of Lawyers of the Czech Republic (Code of Conduct), approved by Resolution of the board of directors of the Czech bar association. 1996. *Official Journal*

- of the Bar 1/1997.
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Czech_Republic_Resolution_of_the_Board_of_Directors_of_the_Czech_Bar_Association.pdf.
- [44] Rules of Professional Practice. 2018.
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Germany_BORA_Rules_of_Professional_Practice.pdf.
- [45] Senyakin, I.M. 2010. Personal rights and state responsibility for their implementation. *Government Bulletin of Khanty-Mansiysk Autonomous Region* 5(26): 7-9.
- [46] Summary of Disciplinary Proceedings and Contact Points in the EU and EEA Member States. 2016. CCBE.
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EU_LAWYERS/Position_papers/EN_EUL_20161128_Table_discipline.pdf.
- [47] The right to a lawyer. 1982. <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19820160124>.
- [48] Ukrainian National Bar Association. 2013. <http://en.unba.org.ua/regulatory-acts>.
- [49] Venugopal, B.S. 2011. Civil liability of lawyers for deficiency in services: a critical analysis. *Journal of the Indian Law Institute* 53(2): 275-309.
- [50] Vilchik, T.B. 2015a. *Advocacy as an Institution of Safeguarding of the Right for Legal Aid: A Comparative Insights of the EU and Ukrainian Legislation*. Pravo.
- [51] Vilchik, T.B. 2015b. Disciplinary and civil liability of lawyers. *Information and Law* 3(15): 115-122.
- [52] Vilchik, T.B. 2015c. Disciplinary liability of lawyers in EU countries and in Ukraine. *Finance and Law* 4: 38-44.
- [53] Vitruk, N.V. 2009. *General Theory of Legal Liability*. Norma.
- [54] Yonas, G. 2001. *Principle of Responsibility*. Libra.
- [55] Zaborovskiy, V.V. 2017. *Legal Status of a Lawyer in the Period of Transition of Civil Society and Law Rules State in Ukraine*. Gelvetyka.
- [56] Zadoya, I.I. 2014. Types of disciplinary penalties for lawyers: problems of legislative regulation. *Scientific Herald of the International Humanitarian University* 902(2): 10-13.
- [57] Zippelius, R. 2004. *Legal Methodology*. Referat.

ASERS

Journal of Advanced Research in Law and Economics

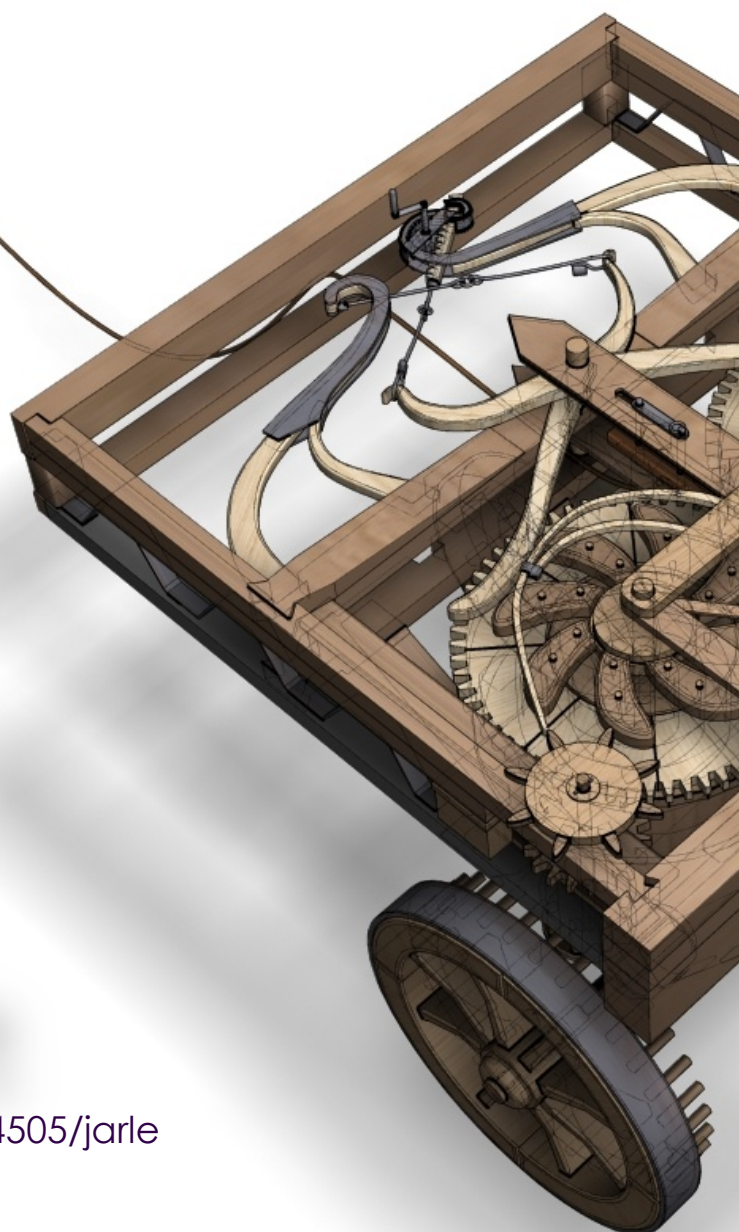
Quarterly

Volume X
Issue 2(40)
Spring 2019

ISSN: 2068-696X

Journal's DOI: <https://doi.org/10.14505/jarle>

ASERS
Publishing



- 21 **Financial Inclusion and Bank Efficiency in Indonesia**
by Fida Muthia, Agung Putra Raneo, and Sri Andaiyani ... 595
- 22 **Independence of an Advocate in Disciplinary Proceedings: Comparative Approach with a Focus on Ukrainian Experience**
by Ivan V. Nazarov, Olena M. Ovcharenko, Yana O. Kovalyova, and Yulia O. Remeskova ... 603
- 23 **Socio-economic Development of Russia**
by Lionella Nikolaevna Nazarova, Ilmir Vilovich Nusratullin, Anastasiya Andreyevna Aksenova, Yuliya Yunusovna Gazizyanova, and Aleksey Ivanovich Tikhonov ... 616
- 24 **Specifics of the microfinance market development in Russia**
by Tatiana Petrovna Nikolaeva, Tatiana Aleksandrovna Panova, and Anna Aleksandrovna Vershinina ... 625
- 25 **The Competitiveness of the Industrial Sector of the National Economies within the Setting of the Eurasian Economic Union**
by Perizat Orynbet, Meirambala Beisembekovna Seisekenova, Gaukhar Sakhanova, Yelena Ivanovna Ladanenko, Larisa A. Kapustyan, and Vitalii V. Purichi ... 631
- 26 **Small and Medium-Sized Enterprises in the Russian Federation: Regularities of Spatial Distribution**
by Julia Semenovna Pinkovetskaya, Svetlana Nikolayevna Meliksetyan, Albert Valentinovich Pavlyuk, Natalya Nikolayevna Lipatova, and Ilmir Vilovich Nusratullin ... 640
- 27 **Paradigm Shift in Technological Development of Socio-Economic System in the Context of Digital Transformation**
by Tatiana Vitalievna Pogodina, Natalya Leonidovna Udaltsova, and Alla Vadimovna Filushina ... 653
- 28 **Innovative Development of the Food Industry in the Conditions of Sanctions and Import Substitution on the Basis of Public-Private Partnership**
by Julia Alexandrovna Romanova, Natalya Yurievna Barkova, Olga Alexandrovna Borodina, Marina Viktorovna Soloveva, and Olga Evgenievna Ustinova ... 663
- 29 **Social and Legal Norms Ensuring the Child's Right to Live and be Brought up in a Family**
by Evgenia Sergeevna Sagalaeva, Svetlana Nikolaevna Ivahnenko, and Olga Viktorovna Landina ... 674
- 30 **Analyzing Foundations of Imposing a Monetary Penalty on Parties to a Criminal Proceeding**
by Arman Sakharbay, Askar Kadyrovich Kaliyev, and Moldir Saparbekkyzy Baikomurova ... 682

ASERS Publishing

Copyright © 2019, by ASERS® Publishing.
All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except under the terms of the Romanian Copyright, Designs and Patents Law, without the permission in writing of the Publisher.

Requests to the Publisher should be addressed to the Permissions Department of ASERS Publishing: asers@asers.eu and apg@aserspublishing.eu

<http://journals.aserspublishing.eu>
ISSN 2068-696X
Journal DOI: <https://doi.org/10.14505/jarle>
Journal's Issue DOI:
[https://doi.org/10.14505/jarle.v10.2\(40\).00](https://doi.org/10.14505/jarle.v10.2(40).00)