

CCBE FOLLOW-UP REPORT ON UKRAINE

26/02/2014

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Introduction

After finalizing last November the [report on the CCBE fact-finding mission to Kyiv, Ukraine](#) of 10-12 July 2013, the CCBE received information about new developments in the Khmelnytsky and Chernigov regions of Ukraine.

Serious concerns regarding the self-regulation of the legal profession have been raised by legal professionals in these regions. Most importantly, the CCBE was informed of violations of the advocates' right to vote in, and stand for, regional bar elections.

The CCBE made inquiries into the situation in these two regions. Its findings in this report are based on phone interviews with the former chairs of the Bars of the Khmelnytsky and Chernigov regions, Klara Margulyan and Gennady Avramenko, documents provided by them or available on the website of the [Ukrainian National Bar Association](#) (UNBA), including official extracts from the Unified Register of Ukrainian Advocates, and information circulated in the Ukrainian media regarding the situation of the legal profession in Ukraine, and especially in the Khmelnytsky and Chernigov regions.

Notwithstanding the similarity of concerns in these two regions, their situations differ.

1. Description of situation

1.1. **Khmelnytsky Region**

1.1.1. *Decision N 208 of the Bar Council of Ukraine on convening a regional conference in the Khmelnytsky region*

On 27 September 2013, the Bar Council of Ukraine issued Decision N 208 convening a Regional Conference of Advocates in the Khmelnytsky region (hereinafter - Decision N 208)¹. Decision N 208 refers to the Regional Constituent Conference of Advocates held on 13 October 2012. Klara Margulyan was elected as Chairman of the Regional Bar Council at the conference in 2012.

Decision N 208 notes that on 27 September 2013 (which is the day of the decision) the Unified Register of Advocates of Ukraine contained *only* information on 179 advocates in the Khmelnytsky Region². The Unified Register had no data on the working addresses of a number of advocates who were elected at the Regional Constituent Conference in 2012, including the Chairman of the Regional Bar, Klara Margulyan.

Decision N 208 also states that in September 2013, the chairman of the regional Qualification and Disciplinary Commission addressed the Bar Council of Ukraine with the question on the necessity of organising a conference of advocates in the Khmelnytsky Region in order to approve the staff lists and the budgets of the Regional Bar Council and the Regional Qualification and Disciplinary Commission and in order to verify facts relating to the passivity of the Regional Bar Council.

Decision N 208 concludes that a number of advocates elected in 2012 to the Regional Bar Council, the Regional Qualification and Disciplinary Commission or the Regional Audit Commission did not have the right to participate in the work of these bodies on the grounds that the Unified Register did not have complete information on these advocates, and therefore these bodies have not been operating with their full composition.

¹ The Decision N 208 is available online [here](#) (in Ukrainian).

² The advocates are listed in the annex to Decision N 208.

Furthermore, Decision N 208 states that the Regulations of the Regional Bar Council have not been approved by the Bar Council of Ukraine due to the non-delivery of the documents to the latter.³ Therefore, the Regional Bar Council is not operating as a legal entity.

Decision N 208 concludes with the request to convene a regional conference in order to elect a number of members to the regional bar self-governance bodies that correspond to the number of advocates who were elected at the regional constituent conference in 2012, but whose working addresses were not provided to the Unified Register. The conference should also approve the staff lists and the budgets of the Regional Bar Council and of the regional Qualification and Disciplinary Commission. Only advocates who were listed in the Unified register on the date of the decision (i.e., 179 advocates)⁴ may participate in the conference in accordance with the established quota, which is 1 delegate for every 5 advocates.

The new regional conference was held on 23 November 2013 and elected new members to the above mentioned regional bodies (in place⁵ of those elected in 2012 whose details were not included in the Unified Register according to Decision N 208).⁶

1.1.2. Comments from Klara Margulyan, former Chairman of the Regional Bar Council in the Khmelnytsky region

According to Klara Margulyan, Decision N 208 violated the right of advocates to vote in and to stand for elections. Ms Margulyan claims that the Unified Register should normally also have had information on another 664 advocates, including herself (in addition to the 179 advocates listed in the annex to Decision N 208) and therefore they should not have been 'excluded' from participation in the regional conference. She also pointed out that according to extracts, which she obtained from the Unified Register some days after Decision N 208, information on these advocates was available on the official website of the Unified Register.⁷

Klara Margulyan also drew the CCBE experts' attention to the practical problems⁸ related to a recent rule that advocates are included in the Unified Register only after payment of the annual fee. According to the Rules on the Unified Register, point 4.12.,⁹ any changes of the information about an advocate will be included in the Unified Register only upon payment of the annual fee for advocates' self-governance by the relevant advocate. In case of non-payment of the annual fee, changes of the information about the advocate will not be included in the Unified Register, and their record in the Unified Register would be placed in a non-active mode.

Regarding the Regulation on the Regional Bar Council and the work of the Regional Bar Council, Klara Margulyan commented that she, as Chairman of the Regional Bar Council provided all the necessary information and documents to the Bar Council of Ukraine in order to receive the approved and signed regulations, which are necessary to register the Regional Bar Council as a

³ The Law on the Bar, Art. 48 provides that:
"7. The regional bar council is a legal entity. Powers and authorities, and the procedure for operations, of the regional bar council shall be determined in this Law and the Regulation on the Regional Bar Council.

8. The Regulation on the Regional Bar Council to be approved by the Bar Council of Ukraine shall be the constituent document of the regional bar council."

⁴ According to the Law on the Bar, Art. 47, Part 1: *"The regional conference of advocates ... is the conference of the advocates whose place of work is located in the Autonomous Republic of Crimea, regions (oblasts), the cities of Kyiv and Sevastopol, respectively, and whose data are included in the Unified Register of Advocates of Ukraine."* According to Part 2: *"A regional conference of advocates shall be convened by a regional bar council at least one time every year. The conference may also be convened upon proposal ... of the Bar Council of Ukraine. If a regional bar council fails to convene the conference within thirty days from the day of receipt of the proposal on its convocation, ... the Bar Council of Ukraine shall make a decision to create an organizational bureau for convening a regional conference of advocates"*.

The CCBE does not have information whether the Bar Council of Ukraine made such a proposal.

⁵ According to the Law on the Bar, Art. 48, Part 3: *"The Head, the Deputy Head, the secretary and a member of the regional bar council may be early recalled from their positions upon the decision of the bar self-governance body which has elected them"*. The CCBE does not have information that the previously elected advocates had ever been recalled from their positions by the regional conference.

⁶ The Minutes of the Regional Conference of 23 November 2013 are available online [here](#) (in Ukrainian).

⁷ Information on these advocates can be obtained online on the [official webpage of the Unified Register](#).

⁸ Some advocates were not aware that their records in the Unified Register were in a non-active mode. Others argue that they paid the annual fees, but their records in the Unified Register remained in non-active mode or were not included in the Register due to unknown reasons.

⁹ This point was added to the Rules on the Unified Register on 1 June 2013 by the Decision of the Bar Council.

legal entity. However, despite her efforts, she did not receive any regulations approved and signed by the Bar Council of Ukraine. As a consequence, she, as Chairman, could not register the Regional Bar Council as a legal entity, which is why it could therefore not properly operate.

Decision N 208 and the results of the new regional conference are currently being challenged in Ukrainian courts.

1.2. Chernigov Region

1.2.1. Decision N 166 of the Bar Council of Ukraine on convening a regional conference in the Chernigov Region

On 27 July 2013, the Bar Council of Ukraine issued Decision N 166 convening a Regional Conference of Advocates in the Chernigov Region (hereinafter - Decision N 166)¹⁰. Decision N 166 refers to the Constituent Conference of the Advocates of the Chernigov Region that took place on 29 September 2012. Gennady Avramenko was elected as Chairman of the Regional Bar Council at this conference.

According to Decision N 166, the Unified Register *only* had information on 117 advocates (with working addresses in the Chernigov Region). The decision states that there was no information in the Unified Register on the majority of the advocates elected at the Constituent Conference in 2012, including Gennady Avramenko.

Decision N 166 also states that the Regulations on the Regional Bar Council and on the Qualification and Disciplinary Commission were not approved by the Bar Council of Ukraine. The Decision also states that *another* regulation on the Regional Bar Council of the Chernigov Region was certified by a seal of a Bar Council of Ukraine, which was made by an unknown person (since the Bar Council of Ukraine does not have a seal). This latter regulation was submitted by the Chairman of the Regional Bar Council, Gennady Avramenko, for state registration in March 2013. On the basis of this regulation, the Regional Bar Council was registered. On 25 April 2013, the Chernigov district administrative court ruled, however, that the registration of the Regional Bar Council was unlawful and annulled it. On 9 July 2013, the Chernigov district administrative court further ruled that the registration of the Qualification and Disciplinary Commission of the Bar of the Chernigov Region was unlawful.

The decision concludes that the bodies of advocates' self-governance of the Chernigov region had not been properly formed and did not act as legal entities, and that the advocates who were elected in 2012 were either not included in the Unified Register or did not have their working addresses in the Chernigov region listed in the Unified Register.

In addition, Decision N 166 refers to the decision of 26 July 2013 of the Qualification and Disciplinary Commission of the Zakarpatskaya Region, which disbarred the Chairman of the Regional Bar Council of Chernigov Region, Gennady Avramenko.

Decision N 166 concludes with a request to convene a conference of advocates of the Chernigov region in order to elect advocates to the regional and national bar self-governance bodies and to approve the staff list and the budget of the Regional Bar Council and of the Qualification and Disciplinary Commission of the Regional Bar. Only advocates who were listed in the Unified Register on the date of the decision (i.e., 117 advocates) may participate in the conference in accordance with the established quota, which is 1 delegate for every 3 advocates.

¹⁰ The Decision N 166 is available online [here](#) (in Ukrainian).

The new regional conference was held on 18 September 2013, where the majority of the previously elected advocates were recalled, including Gennady Avramenko, and new members of the regional and national bodies of advocates' self-governance were elected.¹¹

1.2.2. Comments from Gennady Avramenko, former Chairman of the Regional Bar Council in the Chernigov region

Gennady Avramenko commented that the issues concerning the Regulation (see above 1.2.1. – third paragraph) of the Regional Bar Council are linked to the problems around the National Constituent Congress held in 2012.¹² In November 2012, he participated in the Constituent Congress that took place at the Panorama Movie Theater. He and a number of other advocates did not recognise the legitimacy of the UNBA, which was formed in accordance with the election results of the Constituent Congress that was held at the Rus hotel (in parallel to the Congress at the Panorama Movie Theater). Together with other advocates, Gennady Avramenko has been challenging the results of the Constituent Congress in Ukrainian courts. In their view, the rightful bodies had been elected at the Constituent Congress that took place at the Panorama Movie Theater. Gennady Avramenko informed the CCBE that the Regulation on the Regional Bar Council of the Chernigov Region was approved by the Bar Council of Ukraine that was elected at the Panorama Movie Theater¹³. He registered the Regional Bar Council of the Chernigov region on the basis of this Regulation. Disciplinary proceedings were brought against him due to his latter actions, which led to his disbarment¹⁴.

Gennady Avramenko claims that 482 advocates¹⁵ of the Chernigov Region should have been listed in the Unified Register by the date of Decision N 166, and that all required data, including their working addresses, should have been available in the Register. Gennady Avramenko provided the CCBE with copies of extracts from the Unified Register on a number of advocates in the Chernigov Region who were excluded from participation in the new regional conference on 18 September 2013. The extracts date from August and September 2013. Currently, the Unified Register does not contain any information on these advocates.

Gennady Avramenko also informed the CCBE that four advocates filed a complaint about Decision N 166 to the Desnyansky district court of the Chernigov Region against the Chairman of the Bar Council of Ukraine, Lidiya Izovitova. 315 advocates joined these proceedings as third parties. After filing the complaint, information on all 319 advocates was deleted from the Unified Register. Gennady Avramenko told the CCBE that some of these advocates were asked (unofficially) by the new regional bar to stop their participation in the court proceedings and to submit claims concerning the illegitimacy of the previously formed regional bodies. In return, they were promised that their information would again appear in the Unified Register. Gennady Avramenko believes that some advocates submitted these complaints under threats.

On 6 November 2013, the Desnyansky district court of the Chernigov Region rejected the complaint of four plaintiffs regarding decision N 166. The court decision was appealed, but the appeal was also rejected.

Gennady Avramenko also reported that some advocates - who were part of the complaint about Decision N 166 and whose details were deleted from the Unified Register after its filing - lodged complaints to the prosecution office and asked them to conduct a criminal investigation under Article 397 of the Criminal Code of Ukraine, which makes it a criminal offence to hinder the legitimate activities of a defender or a legal aid provider. The advocates argue that because their details have been removed from the Unified Register, they can no longer practice in criminal

¹¹ The minutes of the regional conference of 18 September 2013 are available online [here](#) (in Ukrainian).

¹² Regarding problems around the Constituent Congress, see the [report on the CCBE fact-finding mission to Kyiv, Ukraine](#), particularly, pp. 4-7.

¹³ See the official website of the UNBA [here](#) (in Ukrainian).

¹⁴ By the decision of the Qualification and Disciplinary Commission of the Zakarpatskaya Region of 26 July 2013.

¹⁵ According to Gennady Avramenko, this number refers to a number of advocates who have had their working address in the Chernigov Region by the date of the Decision N 166. This number was taken from the list of advocates of the Chernigov Region that was on hold by the Regional Council.

proceedings after the entry into force on 16 January 2014 of Article 45, Part 2, of the Criminal Procedure Code of Ukraine, which provides that a lawyer cannot be a defender if his or her details are not included in the Unified Register.

Gennady Avramenko also raised concerns about the fact that disciplinary proceedings were moved outside the Chernigov region (therefore outside of the place of residence or work of a particular advocate). It would not be right to transfer disciplinary proceedings from one regional Bar to another regional Bar. The transfer of such disciplinary proceedings raises questions with regard to privacy and data protection.¹⁶

1.2.3. Special ruling of the Desnyansky district court of the Chernigov Region

On 6 November 2013, the Desnyansky district court of the Chernigov Region rejected the complaint of four plaintiffs regarding decision N 166 (see above 1.2.2.). Additionally, the court issued a special ruling and requested that it to be delivered to the Regional Bar Council and to the Qualification and Disciplinary Commission in order to inform them about violations of the Law on the Bar and Advocate's activity, of the Ethical Rules and of decisions of the Bar's bodies by the four claimants for the purpose of measures to be taken to prevent violations in the future. The court clarified that the Ethical Rules had been violated because the claimants were making "tactless remarks against officials of the bodies of advocates' self-governance" during the court proceedings. These remarks were expressed in a disdainful attitude towards officials of the Bar Council of Ukraine and their legitimate actions. The special ruling also stated that the claimants had accused the head of the UNBA and the deputy chair of the UNBA of illegal activities, though the claimants had not had any proper evidence of the illegality of such activities. In the view of the court, the claimants were making "unfounded remarks" against their colleagues.

The court concludes that these violations create conditions that are conducive to violations of legal guarantees of advocates' self-governance.

The court found that the claimants deliberately did not send the required information to the Unified Register on time (i.e., before 10 January 2013).¹⁷ In this context, the court referred to Point 7.7 of the Regulation on the Unified Register which provides that any delay in providing or confirming information needed for the Unified Register constitutes a disciplinary offence.¹⁸

In its reasoning, the court states that it should be verified whether the claimants paid the annual advocates' fees in line with the relevant provisions of the Law and decisions of the Bar, and in the case that they did not, they violated Article 21 of the Law.

The special ruling was appealed. On 8 February 2014, the Appeal Court of the Chernigov Region declared the special ruling of 6 November 2013 illegitimate and annulled it. The Appeal Court reasoned that the plaintiffs did not participate in the court hearings in the role of advocates performing their professional duties in accordance with the Law on the Bar and the Ethical Rules, but rather participated in the role of plaintiffs (natural persons) who applied for the protection of their rights, and therefore the Law on the Bar could not be applied to such actions. Furthermore, according to the Civil Procedure Code of Ukraine, a court should send a special ruling to relevant organisations only in the case that it established a violation of law, in conjunction with the causes and conditions that contributed to it. The purpose of special rulings is for relevant organisations to adopt measures that address these causes and conditions. However, the Desnyansky District Court did not refer to such causes and conditions in its special ruling of 6 November 2013, and therefore, it should not have been delivered.

¹⁶ Regarding transfer of disciplinary proceedings, please see the CCBE Report on the fact-finding mission to Kiev, Ukraine, 12-12 July 2013, p.11.

¹⁷ According to the Regulation on the Unified Register, point 7.3, advocates shall "provide the National Bar Council by 10 January 2013 with the information required in Article 17 of the Law on the Bar and Advocate's activity. This information is needed for initial formation of the Unified Register".

¹⁸ According to the Regulation on the Unified Register, point 7.7, "delay in providing (confirming) information for the Unified Register (in line with Article 17 of the Law on the Bar and Advocate's activity) constitutes a failure to comply with the decision bodies of advocates' self-governance, and should entail the imposition of a disciplinary sanction".

The CCBE, however, received information that the Head of the Regional Bar Council requested the Disciplinary Chamber a few days after the delivery of the special ruling (in November 2013) to consider initiating proceedings against three advocates (who figure amongst the four plaintiffs mentioned above) concerning the non-payment of fees. One advocate was suspended for four months as a result of the disciplinary proceedings brought against her. One case is still under consideration, and in the other case, no disciplinary sanction was imposed. The CCBE does not have information on whether the disciplinary sanction was annulled or if the other disciplinary case was later closed.

1.2.4. Application to the European Court of Human Rights

On 30 December 2013, Gennady Avramenko and others lodged an application to the European Court of Human Rights against Ukraine for violation of Articles 6 (Right to a fair trial), 8 (Right to respect for private and family life), 10 (Freedom of expression) and 13 (Right to an effective remedy) of the European Convention on Human Rights. The application addresses the events around the establishment of a national Bar in Ukraine and the conduct of disciplinary proceedings.

2. Conclusions and Recommendations

The CCBE experts acknowledge that they were not able to gather all of the information and documents as they would have wished. They were not able to verify all of the factual information that they received, in particular with regard to the registration of advocates in the Unified Register.

Nevertheless, they believe that they have enough information to allow them to comment on the regional developments following the establishment of the new Bar and the current situation of the legal profession in the Khmelnytsky and Chernigov regions of Ukraine.

2.1. Registration of advocates in the Unified Register and convention of the regional conferences

The CCBE experts believe that the pure formality of registration in the Unified Register should not be used as a tool to exclude advocates from the self-governing process and from participation in conferences. Ukrainian advocates should not be deprived of their right to vote and their right to take part in the work of the bar's self-governance bodies on the grounds that no, or no full, information was in the Unified Register. The CCBE experts find these developments extremely worrying, all the more since it affects a high number of advocates: in the Khmelnytsky region - 664 out of 843 advocates and in the Chernigov region - 482 out of 599 advocates.

The CCBE experts believe that the Bar should use effective means of communication with advocates in order to avoid situations, in which advocates are excluded from the Unified Register or their records are switched into non-active mode due to technical problems and miscommunication. The Bar should also have in place an effective mechanism to prevent situations when lawyers might be excluded from the Unified Register on arbitrary grounds. Any decision of the Bar that limits an advocate's ability to perform their professional functions, or that in practice "suspend" their right to engage in professional activities, should not be 'automatic' without a proper mechanism or procedure being in place that would allow an advocate to react. In one example, as far as non-payment of annual fees is concerned, the CCBE experts would like to suggest that the Bar introduce a procedure to deal with cases of non-payment, starting with proper notification to the advocate of the non-payment and giving them a reasonable time to react. Such a procedure could eventually lead to disciplinary proceedings, if necessary.

The CCBE experts also take note of the timing of the removal of information on the 319 advocates of the Chernigov Region from the Unified Register, which occurred not long after their challenging

of Bar Council Decision N 166 in court. The experts are concerned that there might be a connection given that information was deleted from the Register shortly after the advocates' court action.

Considering the continuous fractions within the legal profession in Ukraine, including in the Chernigov and Khmelnytsky regions, as well as the ongoing disputes in Ukrainian courts regarding the organisation and forming of the regional bodies of advocates' self-governance, the CCBE experts are convinced that convening new regional conferences, in which all advocates of the relevant regions can participate, could reconcile the legal profession. If required, the Bars and Law Societies of other European countries could provide their Ukrainian colleagues with valuable knowledge and experience concerning the organisation of regional elections.

The CCBE was informed that on 28 February 2014, the Bar Council of Ukraine decided to convene a new Congress of Advocates of Ukraine on 26 April 2014 in Odessa. The CCBE welcomes that decision and hopes that the new Congress will reunite and allow for participation of all advocates in Ukraine, including those who were not able to participate in recent regional elections because their data was not, or not fully, included in the Unified Register. The CCBE can provide useful support and experience in order to help the Bar to organise the Congress.

2.2 Self-regulation and independence of the profession in disciplinary proceedings against advocates

The CCBE experts would like to ingeminate that self-regulation is a characteristic of the legal profession in Europe. This characteristic is perceived as a corollary to its independence. Self-regulation addresses the collective independence of members of the legal profession. It is nothing less than a structural defence of the independence of the individual lawyer, which requires a lawyer to be free from all influence, especially from his or her personal interests or external pressure. The principle of self-governance is enshrined in international and European legal instruments.¹⁹

The CCBE experts acknowledge that they do not have complete information on the state of relevant court proceedings and might not have the necessary understanding of the administration of justice in Ukraine and the laws and regulations which need to be taken into account when looking at such situations. However, in light of the few court decisions at the disposal of the CCBE and other information received, the CCBE experts continue to question whether the core principles of legal profession, in particular self-regulation and independence of the profession, are guaranteed.

Whereas it is true that courts apply the law and rule on breaches against the law, the CCBE experts believe that it is important to ensure that advocates are brought to disciplinary liability only according to the rules and procedure of disciplinary proceedings. The CCBE experts reiterate their fear for the independence of the Bar if the courts continue to interfere with the self-administration of the profession and play a leading role in imposing disciplinary measures against members of the advocates' profession. It is especially worrying that the courts require the Bars to inform the courts on the follow-up given by them to the special rulings (within a month).

At the same time, the CCBE experts are also highly concerned that advocates are disciplined for activities which fall within the self-administration of Bars.²⁰ They wonder about the independence of Bars which seem to respond rather quickly to special rulings of courts (even if not in force).

The CCBE experts would like to reiterate that only Ukrainian advocates can and should find a solution to the effective operation of regional and national Bars. Ukrainian authorities and other stakeholders should restrain from any interference in advocates' self-governance and should take

¹⁹ See: [The United Nations Basic Principles on the Role of Lawyers](#), Point 24; [The Council of Europe Recommendation Rec\(2000\)21 on the freedom of exercise of the profession of lawyer](#), Principle V; [The CCBE Charter of Core Principles of the European Legal Profession](#), Principle j.

²⁰ For more information, see the report on the CCBE fact-finding mission to Kiev, Ukraine on 10-12 July 2013, p. 14.

all steps necessary to ensure the independence of the legal profession. If required, the international legal community could provide appropriate support to the Ukrainian legal profession. The CCBE, which represents European lawyers, is willing and ready to assist in order to ensure a proper functioning of the legal profession in Ukraine.

The CCBE experts are open for comments and feedback on this report.

Annexes

1. Rules on the Unified Register of Advocates of Ukraine. Available in Ukrainian [here](#).
2. Decision N 166 of 27.07.2013 on Convocation of the Conference of Advocates of the Chernigov Region. Available in Ukrainian [here](#).
3. Decision N 208 of 27.09.2013 on Convocation of the Barristers' Conference in the Khmelnytsky Region. Available in Ukrainian [here](#).
4. [Special ruling of the Desnyansky district court of the Chernigov Region of 6 November 2013](#) (in Ukrainian).

**Annex 4. Special ruling of the Desnyansky district court of the Chernigov Region of
6 November 2013**

Справа № 750/8726/ Провадження № 2/750/281



О К Р Е М А У Х В А Л А

06.11.2013 року
Чернігів

м.

Деснянський районний суд м. Чернігова у
складі: головуючого судді Карапута Л.В.,
при секретарі Руденок В.О.,

розглянувши у відкритому судовому засіданні в приміщенні суду цивільну справу за позовом Авраменко Ніни Леонідівни, Атрощенко Наталії Андріївни. Розмовенко Оксани Геннадіївни, Полубень Сергія Володимировича до Ізовітової Лідії Павлівни голови Національної асоціації адвокатів України, голови Ради адвокатів України, Національної асоціації адвокатів України, Максимової Жанни Володимирівни, Дроботущенко Тетяни Олександрівни, Репях Світлани Миколаївни Черненко Геннадія Івановича, Середи Анатолія Дмитровича, Гринь Людмили Василівни про захист честі, гідності та ділової репутації, спростування недостовірної інформації та визнання особистого немайнового права,-

встановив:

Авраменко Ніна Леонідівна, Атрощенко Наталія Андріївна, Розмовенко Оксана Геннадіївна, Полубень Сергій Володимирович звернулися з позовом до Ізовітової Лідії Павлівни - голови Національної асоціації адвокатів України, голови Ради адвокатів України, Національної асоціації адвокатів України про захист честі, гідності та ділової репутації, спростування недостовірної інформації.

Рішенням суду від 08 листопада 2013 року в задоволенні позовних вимог відмовлено повністю.

Під час розгляду даної справи судом було виявлено ряд порушень Закону України «Про адвокатуру та адвокатську діяльність» позивачами по справі, на які суд вважає за необхідне відреагувати окремою ухвалою відповідно до вимог ст. 211 ЦПК У країни.

Так, судом встановлено, що згідно вимог ст. 12 Правил адвокатської етики всією своєю діяльністю адвокат повинен стверджувати повагу до

адвокатської професії, яку він уособлює, її сутності та громадського призначення, сприяти збереженню та підвищенню поваги до неї в суспільстві. Адвокат зобов'язаний виконувати законні рішення органів адвокатського самоврядування, прийняті в межах їх компетенції, що не виключає можливості критики останніх та їх оскарження у встановленому законом порядку.

Критика діяльності, рішень, порядку формування, членів органів адвокатського самоврядування тощо не може бути спрямована на приниження авторитету адвокатури, адвокатської професії та статусу адвоката, бути вираженою у принизливій чи такій, що порочить честь, гідність та ділову репутацію особи формі, а також містити завідомо неправдиву інформацію або заклики до невиконання рішень органів адвокатського самоврядування.

В ході судового розгляду справи було встановлено порушення позивачами Авраменко Ніною Леонідівною, Атрощенко Наталією Андріївною, Розмовенко Оксаною Геннадіївною, Полубень Сергієм Володимировичем порушення вимог Закону України «Про адвокатуру та адвокатську діяльність», Правил адвокатської етики та свідоме невиконання рішень органів адвокатського самоврядування.

Так, відповідно до статті 21 Закону України «Про адвокатуру та адвокатську діяльність», під час здійснення адвокатської діяльності адвокат зобов'язаний дотримуватися присяги адвоката України та правил адвокатської етики.

Згідно статті 62 Правил адвокатської етики, затверджених Установчим з'їздом адвокатів України 17.11.2012 року, адвокат зобов'язаний неухильно дотримуватись загальнообов'язкових рішень органів адвокатського самоврядування, прийнятих в межах їх компетенції в спосіб, передбачений Законом України «Про адвокатуру та адвокатську діяльність».

Порядок ведення Єдиного реєстру адвокатів України затверджується Радою адвокатів України, і такий Порядок був затверджений на засіданні Ради адвокатів України 17 грудня 2012 року.

Відповідно до пункту 7.3 зазначеного Порядку, з метою первісного формування ЄРАУ, адвокати України, в тому числі позивачі, були зобов'язані в строк до 10 січня 2013 року подати до Ради адвокатів України відомості, передбачені статтею 17 Закону, для внесення їх до Єдиного реєстру адвокатів України. Відповідне оголошення було розміщено на сайті НААУ. ЄРАУ почав функціонувати з 16 січня 2013 року.

Судом встановлено, що позивачі не виконали вимоги Закону і не надали відомостей, передбачених статтею 17 Закону, для включення їх до Єдиного реєстру адвокатів України в порядку та строки, визначені п. 4 ч. I Розділу IX Прикінцевих положень Закону України «Про адвокатуру та адвокатську діяльність», рішенням Ради адвокатів України № 26 від 17 грудня 2012 року, що, у відповідності до п.7.7 Порядку ведення Єдиного реєстру адвокатів України є невиконанням рішень органів адвокатського самоврядування і тягне за собою накладення на адвоката дисциплінарного стягнення, передбаченого законом.

Одночасно слід перевірити виконання позивачами сплати щорічних адвокатських внесків на забезпечення реалізації адвокатського самоврядування розмірі, строки та спосіб, визначені статтею 58 Закону України «Про адвокатуру та адвокатську діяльність», Положення про щорічні внески адвокатів на забезпечення реалізації адвокатського самоврядування, затвердженого рішенням РАУ № 72 від 16.02.2013 року, рішенням Ради адвокатів України від 17.12.2012 року.

Зокрема, невиконання вищевказаних вимог позивачами є порушенням ст. 21 Закону України «Про адвокатуру та адвокатську діяльність».

Відповідно до Присяги адвоката України, в редакції закону, що діяв на час отримання позивачами свідоцтва про право на зайняття адвокатською діяльністю, адвокат зобов'язаний у своїй професійній діяльності суворо дотримуватися законодавства України, міжнародних актів про права і свободи людини, правил адвокатської етики, з високою громадянською відповідальністю виконувати покладені на нього обов'язки, бути завжди справедливим і принциповим, чесним і уважним до людей, суворо зберігати адвокатську таємницю, всюди і завжди берегти чистоту звання адвоката, бути вірним Присязі.

Згідно статті 34 Закону, порушення присяги адвоката України, порушення Правил адвокатської етики (далі - Правила), невиконання рішень органів адвокатського самоврядування с підставами для притягнення адвоката до дисциплінарної відповідальності. Згідно ст. 63 Правил, за порушення Правил до адвоката можуть бути застосовані заходи дисциплінарної відповідальності в порядку, передбаченому чинним законодавством про адвокатуру та адвокатську діяльність, а також актами Національної асоціації адвокатів України.

Відповідно до ст. 45 Правил, представляючи інтереси клієнта або виконуючи функцію захисника в суді, адвокат зобов'язаний дотримуватися вимог чинного процесуального законодавства, законодавства про адвокатуру та адвокатську діяльність, про судоустрій і статус суддів, іншого законодавства, що регламентує поведінку учасників судового процесу, а також вимог цих Правил, не виявляти неповаги до суду (суддів), поводитись гідно і коректно.

В ході судового розгляду справи адвокат не повинен:

- намагатися вплинути на рішення (вирок) суду позапроцесуальними засобами;
- робити свідомо неправдиві заяви стосовно фактичних обставин справи;
- подавати суду завідомо неправдиві докази або свідомо брати участь в їх формуванні;
- посилатися в суді на завідомо неправдиві або завідомо викривлені фактичні обставини, або обставини, що завідомо не стосуються предмета спору, або на подані клієнтом докази, стосовно яких йому відомо, що вони є неправдивими, або докази, отримані з порушенням положень цих Правил, а також на особисту обізнаність з обставинами справи, а у виступі в судових дебатах - крім того, на обставини, які не були предметом дослідження під час судового провадження (щодо яких адвокатом не заявлялися клопотання, спрямовані на доказування

таких обставин) за винятком загальновідомих фактів;
- порушувати порядок у судовому засіданні, припускатись сперечань з судом висловлювань, що принижують честь і гідність суду або інших учасників процесу.

Відповідно до ст. 46 Правил, у відносинах з іншими учасниками судового провадження адвокат повинен бути стриманим і коректним, реагувати на неправильні дії або вислови цих осіб у формах, передбачених законом, зокрема, у формі заяв, клопотань, скарг тощо, при допиті підсудних, потерпілих, сторін у цивільному процесі, свідків та інших осіб бути тактовним.

Згідно ст. 51 Правил, відносини між адвокатами повинні будуватися на засадах колегіальності, взаємної поваги представників адвокатської професії, дотримання професійних прав адвокатів, слідування принципам адвокатської діяльності передбаченим Законом України «Про адвокатуру та адвокатську діяльність», цими Правилами.

В судовому засіданні позивачі Авраменко Н.Л., Атрощенко Н.А., Розмовенко О.Г. допускали нетактовні вислови на адресу посадових осіб адвокатського самоврядування, що виражались в зневажливому ставленні до них самих та їх дій направлених на виконання законних рішень Ради адвокатів України та установчого з'їзду адвокатів України.

При цьому, звинувачували голову Національної асоціації адвокатів України голови Ради адвокатів України Ізовітову Л.П., її представника та представник Національної асоціації адвокатів України Гвоздія В.А. в діях, що носять незаконний характер, не маючи належних доказів незаконності таких дій. Позивачі допускали безпідставні висловлювання, що по формі є звинуваченням своїх колег-адвокатів у вчиненні правопорушень, яких ті не вчиняли.

Судом встановлено, що Авраменко Н.Л., Розмовенко О.Г. та Атрощенко Н.А. допустили порушення вказаних норм у виступах в судовому засіданні по відношенню до інших адвокатів, а саме, Ізовітової Л.П., Максимової Ж.В., Репях С.М. Купрієнко О.В та ін.

На думку суду, в порушення вимог ст. 2 Закону України «Про адвокатуру та адвокатську діяльність» виявленні порушення створюють умови, що сприяють порушенню законних гарантій адвокатського самоврядування, як важливої складової незалежного самоврядного інституту - адвокатури України.

З врахуванням вищевикладеного, суд приходить до висновку про необхідність відреагування на встановлені вказані факти окремою ухвалою, яку слід направити Раді адвокатів Чернігівської області та КДКА Чернігівської області як колегіальним органам адвокатського самоврядування для прийняття рішення щодо виявлених, на думку суду, порушень.

На підставі ч. 1 статті 38 Закону України «Про адвокатуру та адвокатську діяльність», керуючись ст.ст. 211, 294 ЦПК України, суд

у х в а л и в :

інформувати Раду адвокатів Чернігівської області, Кваліфікаційно - дисциплінарну комісію адвокатури Чернігівської області щодо наявності в діях

адвокатів Авраменко Ніни Леонідівни, Атрощенко Наталії Андріївни, Розмовенко: Оксани Геннадіївни, Полубень Сергія Володимировича порушення вимог Закону України «Про адвокатуру та адвокатську діяльність», Правил адвокатської етики та рішень органів адвокатського самоврядування з метою вжиття заходів для недопущення порушень в майбутньому.

Про наслідки розгляду окремої ухвали повідомити суд протягом місяця з дня надходження окремої ухвали.

На окрему ухвалу суду може бути подана апеляція до Апеляційного суду Чернігівської області. Апеляційна скарга на ухвалу суду першої інстанції подається протягом п'яти днів з дня її проголошення. У разі, якщо ухвалу було постановлене без участі особи, яка її оскаржує, апеляційна скарга подається протягом п'яти днів з дня отримання копії ухвали.

Суддя

Л.В. Карапута