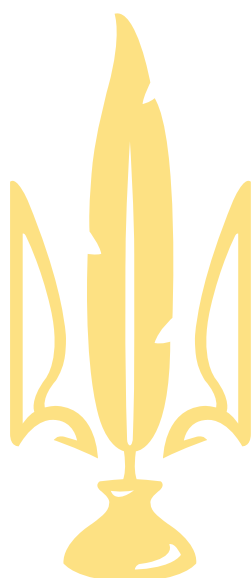




UKRAINIAN NATIONAL
BAR ASSOCIATION

REPORT

**OF UKRAINIAN NATIONAL BAR ASSOCIATION
ON CURRENT ISSUES OF THE FUNCTIONING
OF THE FREE LEGAL AID SYSTEM IN UKRAINE**



2023



CONTENTS

List of conventional abbreviations.....	<u>3</u>
PREFACE.....	<u>4</u>
Chapter I Current aspects of the operation of the FLA system in Ukraine.....	<u>6</u>
1.1. General information about the state of the FLA system in Ukraine.....	<u>6</u>
1.2. Current issues of the functioning of the FPLA subsystem in Ukraine.....	<u>21</u>
1.3. Current issues of the functioning of the FSLA subsystem in Ukraine.....	<u>28</u>
Chapter II Activities of UNBA pertaining to the FLA system.....	<u>36</u>
2.1. Activities of UNBA in the field of FLA provision.....	<u>36</u>
2.2. The state of observance of the rights of advocates providing FLA and the activities of UNBA in this area.....	<u>58</u>
Chapter III Particular issues of the FLA system operation in Ukraine.....	<u>66</u>
3.1. FLA quality monitoring.....	<u>66</u>
3.2. Distribution and execution of orders for the provision of FSLA.....	<u>70</u>
3.3. Compensating advocates for the FLA services.....	<u>71</u>
3.4. Appointment of an advocate to participate in an individual procedural action.....	<u>80</u>
3.5. Participation of advocates in criminal proceedings <i>in absentia</i>	<u>84</u>
3.6. Identification of an advocate with the client.....	<u>88</u>
3.7. Termination of FSLA in suspended criminal proceedings.....	<u>92</u>
CONCLUSIONS AND SUGGESTIONS.....	<u>94</u>
List of sources.....	<u>98</u>

Report of the Ukrainian National Bar Association on current issues of the functioning of the of free legal aid system in Ukraine;

[compiled by: O. O. Kadenko, O. V. Demyanova, G. R. Zosimenko, I. I. Angelin].

LIST OF CONVENTIONAL ABBREVIATIONS

FLA – free legal aid

FPLA – free primary legal aid

FSLA – free secondary legal aid

CC – Coordination Center for Free Legal Aid Provision

Committee – UNBA Committee on Free Legal Aid

UNBA – Ukrainian National Bar Association

MoJ – Ministry of Justice of Ukraine

CMU – Cabinet of Ministers of Ukraine

The Law – the law of Ukraine "On the Bar and Practice of Law"

LoU – Law of Ukraine

QDCB – Qualification and Disciplinary Commission of the Bar

LSB – a local self-government body

BCU – the Bar Council of Ukraine

RC – regional center rendering free secondary legal aid

LC – local center rendering free secondary legal aid

PREFACE

The right to free legal aid and ensuring its implementation by accessible and effective mechanisms is consistently recognized by UNBA as a priority direction of interaction between the State and the Bar.

UNBA has always assumed the responsibility due to its legislatively defined functions and statutory tasks for the organization in the relevant segment of the FLA provision. In particular, being aware of the defining role of advocates in the functioning of the FLA system, UNBA has been fulfilling all its functions in this field for more than ten years, starting from the creation of Commissions for the Assessment of Quality, Completeness and Timeliness of the provision of FLA by advocates and ending with the organization of professional development of advocates in this field.

Despite the initiative partnership in the field of FLA, creation and approbation of its own (which do not affect the state budget) state-of-the-art and effective resources of administration (service provision) of the Bar, transparent possibilities of using such resources in the provision of FLA, UNBA ended up being artificially deprived the stakeholder status in the implementation of state policy in the field of FLA provision, and its institutional capacities are thus completely ignored.

In particular, in the absence of any need for this and at the same time with the existence of the same readily available, time-tested mechanisms within the Bar, the state has created additional taxpayer-funded procedures for selecting advocates, their training, maintaining their Register, assessing the quality of service, allocating the resources for communication therewith, which is carried out by the dedicated state institution – the CC.

The repeated appeals of UNBA pointing to the inexpediency of budget spending on what is already successfully functioning within the Bar have not been dignified with a response. As well as more conceptual appeals of UNBA to stop the practice of duplication and even usurpation by state bodies of the functions of the Bar, as it actually destroys the constitutional model of justice in Ukraine.

The deepening of the crisis in the relations between the State and the Bar in the field of providing FLA, the long-term disregard of the UNBA and the complete elimination of the latter from the management of the FLA system led to gradual fundamental changes in this system, which are characterized by the loss of its primary orientation towards an individual as the highest social value. In particular, in the attempts to create a prototype of the “Ministry” for FLA advocates, formalism, bureaucracy and legal purism flourish. The quality of service rendered by advocates is assessed by the staff of state bodies or local self-government, which often have no idea what the work of an advocate looks like.

And although UNBA emphasizes systematically that this leads to a distortion of the institutional modus operandi of the Bar and violation of the rights of advocates, in fact, it means that the individual faces the burden of all the mishaps in the FLA system. Initially, the system itself was supposed to cater for all needs legal of an individual.

In view of this, the urgent need arose for a decisive resolution to the urgent issues of the functioning of the FLA system.

This report is designed to demonstrate to any interested observer the cause-and-effect relationships that determine the existence of problems in the FLA system and propose effective instruments to resolve them.

At the same time, in the absence of financial reporting information within the FLA system for 2023, at the time of compilation of the present report, it does not cover the financial problems of the functioning of the said system. At the same time, such problems apparently exist, because a significant part of the funds is spent on the administration of those resources and procedures that the Bar is able and offered to implement in the interest of the FLA recipients without any funding from the state budget.

In addition, the report contains references, analytical materials that back up the validity of the conclusions regarding the urgent need for reforming the system of FLA provision. At the same time, the same model of the FLA system that would meet the necessary standards of a legal, social, democratic state, although outlined in this report, however, requires joint development with the participation of all stakeholders.

CHAPTER I

CURRENT ASPECTS OF THE OPERATION OF THE FLA SYSTEM IN UKRAINE

1.1. General information about the state of the FLA system in Ukraine

The state of the FLA system in Ukraine in 2023 had a dynamic of changes characterized by both qualitative and quantitative indicators.

For the sake of better understanding of the changes in the FLA system, the following extended criteria were used for assessment of the state of the said system in the previous report of the [Committee covering specific issues of FLA system operation in Ukraine in 2022](#): FLA stakeholders, the subject matter, and the essence of FLA.

FLA stakeholders

The current legislation stipulates that there are three groups of entities providing FLA: the CC, entities providing FPLA, entities providing FSLA (Art. 6-1 of the Law of Ukraine «[On Free Legal Aid](#)»).

The FPLA providers are: bodies of executive power; local self-government; centers for the provision of free legal aid; specialized institutions for the provision of free primary legal aid formed by local self-government taking into account the needs of the territorial community; legal entities of private law, which have the right to provide legal assistance, attracted by local self-government in accordance with the procedure established by law; advocates and other professionals in the relevant field of law, involved by local self-government in accordance with the procedure established by law.

The FSLA providers are Centers for providing FLA, advocates included in the Register of Advocates providing FSLA.

For its part, the FLA centers constitute a system of regional, local, and inter-regional centers, formed by the MoJ and function as territorial [departments of the CC](#).

Thus, there are two kinds of FLA providers: FLA Centers and other entities, some of those being individual advocates.

The Bar and the State obviously have varying views on who is the main provider of the FLA: UNBA insists that advocates, as highly qualified legal professionals with special professional status, should be direct providers of FLA, while the State has been implementing a policy emphasizing that full-time and outsourced employees of state authorities and local self-government for several years should provide the said service. At the same time, it is allowed for FLA centers' employees to provide both FPLA and FSLA.

In view of this position of the State, **both legal grounds and essence of the FLA centers' activities are of particular importance, as they not only execute administrative functions of mediation between other subjects of legal relations regarding the provision of FLA (between recipients and providers of FLA), but also a significant part of the substantive functions.**

The provision of FLA by RC and LC employees, not being lawyers by training, negatively affects the quality of legal aid and conceptually violates the legally defined model of legal defense.

Thus, the Constitution of Ukraine guarantees everyone the right to professional legal assistance.

According to Art. 131-2 of the Constitution, provision of professional legal assistance is vested with the Bar. The principles of organization and activity of the Bar and exercise of advocacy in Ukraine are determined by law.

LoU "On the Bar and Practice of Law" at the same time defines specific guarantees for the appropriate provision of professional legal assistance: elevated requirements for advocates, a complex procedure for obtaining the right to practice law, clearly defined the foundational and ethical requirements for legal practice, the mechanisms of disciplinary control over it, as well as the specifics of the Bar organization, the defining characteristic of which is its independence from the State.

That is, **a constitutional and legally defined model of guaranteeing the right to professional legal assistance includes the specific provider thereof – the Bar. At the same time, advocates, as designated entities that meet specifically defined requirements, and their activities in providing legal assistance, the quality of which is guaranteed by distinct procedures and mechanisms, are the defining elements of the specified model of ensuring professional nature of the legal assistance.**

When legal assistance provided by entities, other than advocates, the aforementioned safeguards are not applicable, and therefore there is no guarantee of integrity of the legal aid thus rendered, and the principles of rule of law and the right to a fair trial are not guaranteed as well.

Controversies arise in relating to decisions or inaction of state and executive bodies, local self-government, law enforcement etc.

Unfortunately, since 2018, the State has been purposefully implementing the policy of shifting towards primary and secondary professional legal assistance being provided by the full-time and outsourced employees of the centers, state authorities and local self-government. This applies to the provision of both the FPLA and the FPLA by the centers' employees.

In circumstances where the employees of the centers perform not only the administrative functions of mediation between the subjects of legal relations (recipients and providers of the FLA), but also directly render the legal advice, inevitably, the risks of corruption and real conflicts of interest arise, where the center employees are minimally liable for providing poor-quality legal assistance.

Corporate solidarity and psychological predisposition towards covering for co-workers exclude the possibility of providing FLA of proper quality in all disputes with the bodies of state power, as the one defending works for the state himself.

A particularly eloquent example is the numerous disputes arising in legal relations with bodies and institutions that are subordinate or coordinated by the Ministry of Justice (for example, with state notaries or state enterprise "SETAM"), as the CC's employees obligated to provide the FLA in the interests of an individual, are themselves employees of the said State institution.

In addition, the transfer of these functions to the FLA Centers requires an increase in the number of employees across the nation, creation of the new branches and offices, additional funding from the state budget and budgets of territorial communities. This is already happening.

Finally, with a high degree of likelihood, regular employees of the centers may face constant pressure from their supervisors when rendering legal assistance, as they are subordinate and entirely dependent on them. This is unacceptable, since the relationship between the provider and the recipient of the FLA should be trustworthy, and for FLA providers, the interests of those seeking legal advice should be dominant and of highest priority.

During 2023, without taking into account the proposals of the UNBA, amendments were made to the Law of Ukraine "On Free Legal Aid", which will not improve the quality of the FLA provision, and taking into account the projected increase in the number of recipients of such assistance in times of war and the transfer to the centers' staff of the right to provide them with primary and secondary legal assistance, which will likely contribute to an increase in substantiated complaints to the ECHR, which will not improve the credibility of Ukraine among the CoE Member States.

This is one of the arguments that determines the urgent need for amending the said law.

In 1990, the Venice Commission, an advisory body of the Council of Europe on constitutional law, was formed, which provides conclusions on the conformity of draft legislative acts and laws to European standards and values. The Venice Commission is a European and global advisory legal body. Of particular importance are the Commission's opinions on issues relating to compliance with European standards of draft legislative acts or laws. The Venice Commission is composed of independent experts who have received international recognition through their contribution to strengthening the law. The members of the Commission act individually and do not receive any instructions from anyone.

Taking into account the amendments introduced in 2018-2023, the current version of the Law “On Free Legal Aid” should be submitted to the Venice Commission to provide conclusions on its compliance with the Constitution of Ukraine, the Universal Declaration of Human Rights, the ECHR, other international legal instruments, the Law of Ukraine “On the Bar and Practice of Law”, recommendations of international organizations, etc.

In this context, it is appropriate to note that the Law of Ukraine “On Free Legal Aid” should contain clear and unambiguous norms that should define the functions of the FLA centers purely administrative. The centers should provide only coordination of interaction between state bodies and entities of directly providing FLA. FPLA should be provided by advocates and, as an exception, by other legal professionals, independent from the centers. The only FSLA providers should be advocates. This is especially true in the provision of such assistance in labor matters, since the right to work is one of the fundamental constitutional rights, which fulfills vital and creative needs. This category of cases cannot be considered insignificant, defense in this category of cases cannot be entrusted to anyone's subordinates.

In 2023, a continuous reform of the FLA centers was completed. According to the MoJ order dated 08.05.2023 “The issues of optimization of the FLA system”, the procedure for the reorganization of RCs and LCs has been launched. On the basis of Ternopil Regional Center, the Western Interregional FLA Provision Center was established, to which 6 regional and 23 local centers were joined.

A similar procedure in other regions is scheduled for early 2024.

The effectiveness of such changes, as well as its economic outcomes are difficult to assess. The most approximate estimates will be possible only after the publication of the CC report for 2024.

At the same time, the consolidation of the RCs should be accompanied by the electronic reporting implementation. Without a full-scale introduction of electronic reporting, the consolidation of the RCs threatens to become another obstacle to timely payment for the services rendered. Currently, the CC website in the section “For Advocates” contains no relevant information on the procedure for submitting reports electronically.

The FLA system management declares the implementation of electronic reporting, but measures in this regard are implemented slowly, and therefore require more attention.

In addition, advocates file numerous complaints that due to the reorganization, communication with the FSLA Centers became difficult. In particular, in fact, there is no possibility of prompt resolution of current organizational issues pertaining to fulfillment of the distributed FLA orders: for the most part, both through personal appeal to the FLA center employees, and through official channels, it is technically difficult to obtain any information necessary to provide the FSLA.

Despite the fact that advocates and FLA management lead an appropriate dialog and the latter is reliably aware that the reorganization of the centers has led to difficulties in communication with advocates and in accordance with the emergence of certain organizational obstacles in their provision of FSLA, the key issue, namely the creation of tools for renewing such communication is not systematically resolved. In particular, at the end of 2023, advocates were the only category, not endowed with the feedback tools at the official CC website (or other available resources).

The FLA centers' reform, obviously, involves the digitalization of every aspect of interaction between the Centers and FLA providers which in general corresponds with modern trends in the development of legal systems. At the same time, the specifics of the execution of FLA orders by advocates, the human-oriented nature of such activities and the often direct dependence of the effectiveness of providing free legal aid to a particular person on the efficiency of the exchange of information on the execution of instructions between centers and advocates make it necessary to organize communication between advocates and centers' staff in a proper manner.

Despite the fact that the current legislation defines advocates as one of several entities providing FLA, their real role in the functioning of the system is close to the definitive one.

Since there is no official consolidated data on the persons providing FPLA, the analysis was carried out based upon the published indicators regarding FPLA providers.

Thus, according to the latest data

8,644 advocates

are included in the FSLA Register of Advocates.

According to the 2022 FLA annual report,

8,639 advocates

were included therein

As a result of the admission competitions in 2022,

513 advocates

were included into the [FSLA Register of Advocates](#).

It is known that in 2023, some advocates submitted applications for exclusion from the [FSLA Register of Advocates](#); there was no other information on the increase or decrease in the number of advocates admitted to the FSLA provision at the time of preparation execution of the present report.

Therefore, purely arithmetically, in 2023, the number of advocates in this Register

increased by only 5 people

which indicates a tendency to reduction of the advocates' interest in joining the FLA system. In addition, the number of advocates in the register indicates the ineffectiveness of using the practice of ever-increasing number of admission competitions, forming a circle of advocates loyal to the system.

It should be noted that the decision of the BCU from 04.11.2022 No. 124 establishes the duty of advocates within ten days from the date of inclusion in the FSLA Register of Advocates, and/or the conclusion of either permanent or temporary contract for the provision of FSLA to file a notice to enter such information in the [Unified Register of Advocates of Ukraine](#).

In pursuance of the said decision of the BCU during 2023,

2,158 advocates

submitted a notification of their interaction with the FLA system.

The process in the direction of purposeful work of UNBA with FLA advocates continues, but its preliminary quantitative indicators allow to assert that the number of advocates who position themselves as providers of FSLA, and the number of advocates whose information is contained in the relevant register of the CC, are far apart.

This confirms the preceding conclusion that the purpose of conducting groundless admission competitions is not to form an objective and conditioned by the needs of the system of provision of the FLA pool of advocates, but to create an artificial impression of [the scale of cooperation between the system and advocates](#).

An important subject of the FLA provision is the FLA recipient.

UNBA has repeatedly stressed that the number of [FLA recipients is excessive and obviously needs to be reduced](#).

Despite the fact that the Ukrainian system of FLA is almost the largest in the world by the categories of recipients and volumes, the tendencies to its expansion persist.

Thus, in 2023, the list of those entitled to FSLA has been significantly expanded.

The new categories of persons entitled to FSLA include:

- § foreigners and stateless persons detained for the purpose of identification and expulsion enforcement;
- § persons of special labor merit to the Homeland, and persons-victims of Nazi persecution;
- § persons that suffered from human trafficking;
- § persons who reported assets specified by the Law of Ukraine "On Sanctions";

§ citizens of Ukraine who have appealed for the establishment of legal facts related to the restoration of lost documents necessary to obtain compensation in accordance with the Law of Ukraine "[On Compensation for Damage and Destruction of certain kinds of Real Estate as a result of Hostilities, Terrorist Acts, Sabotage, caused by the armed aggression of the Russian Federation against Ukraine, and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage caused by the armed aggression of the Russian Federation against Ukraine](#)", etc.

Despite the fact that the range of recipients of the FLA in 2023 was expanded, it has not included one of the most vulnerable categories of citizens enduring the martial law– relatives of missing persons.

Each of the missing persons has family members or close relatives who have the rights defined by the laws of Ukraine "On Social and Legal Protection of Servicemen and their Families", "On the Legal Status of Persons Missing in Special Circumstances", "On Pension Provision for those Discharged from Military Service, and others."

It is also important to protect those who previously had the status of missing persons under exceptional circumstances, but who were found alive and returned to the territory controlled by Ukrainian authorities (for example, returning from captivity).

All these individuals are faced with the need to solve a number of legal issues. Thus, the family members of the missing need to receive information about the search, file application for benefits and receive payment of monthly cash support of military personnel. Similarly, the persons whose whereabouts were established, face the problems of renewal of property, family, labor rights. But, given the low level of legal awareness of citizens, all of them cannot independently realize the opportunities guaranteed by the laws of Ukraine.

In view of this, by the decision of the BCU from 15-16.12.2023, it was decided to initiate amendments to the Law of Ukraine “On Free Legal Aid” and to provide for the right to receive all types of legal services provided for by s.2 of Art. 13 of this Law, for close relatives and family members of persons missing in special circumstances; persons who had the status of missing persons under special circumstances, but whose whereabouts were established.

The changes have not been adopted yet.

A significant problem for advocates was that the recipients of the FLA did not have legally defined duties that would at the proper level regulate the trilateral relations on the provision of FLA.

However, in 2023, the Law of Ukraine “On Free Legal Aid” was amended with Art. 26-1, which defines the rights and obligations of the FSLA recipients. In addition, Article 23 of the same Law was amended: to establish the ground for termination of the FSLA provision in case of non-fulfillment by the FSLA recipients of certain obligations.

It should be noted separately that despite a fairly wide scope of rights in the described system of relations, the recipient still has the least influence. *An important feature of the Ukrainian FLA system is that the recipient cannot choose his advocate. In contrast, in many countries, the recipient of legal assistance receives funding that can be transferred to any advocate.*

It should also be noted that there is a significant difference between the attitude of the recipients of the FLA in criminal and civil cases to the providers of such FLA. At the heart of such differentiation lies voluntary initiative of entering into the said legal relations: in criminal cases, the recipients of the FLA are brought to criminal liability against their will, and in civil cases, they mostly want to become a party to the relevant legal relations. If the peculiarity of criminal cases and the significance of the result thereof for the most part determines an adequate assessment by the recipients of the FLA of the work of advocates, in civil cases often the services of the FLA provider are perceived as free, and therefore can be used even without a focus on the end result (focusing on the legal process itself).

Toxic judicial practice exacerbates this problem, as does incorrect use of terminology, the use of the derogatory term “free advocate” and other similar statements even in the text of court decisions.

According to the Unified State Register of Court Decisions, in 2023 alone, the phrase “unpaid advocate” was used in 220 decisions, and the phrase “free advocate” was used in 114 acts of the judiciary.

The inadmissibility of such a designation of advocates providing FLA is due not only to the fact that free/unpaid advocates do not exist in Ukraine terminologically and/or economically. Such designation of advocates leads to the formation of a false idea among the recipients of the FLA about the inferiority of such advocates and legal assistance provided by them.

The subject matter of the FLA

Comparison of the FLA and other forms of legal practice, defined by the Law of Ukraine “On the Bar and Practice of Law” indicates that, as before, there are areas not covered by the FLA. First of all, these are legal services provided to legal entities, state authorities, local self-government, and the State. In addition, it includes representing the interests of individuals and legal entities, the State, public authorities, local self-government bodies in foreign or international judicial bodies.

All other forms of legal practice in one way or another are included in the scope of the FLA notion.

The significance of such a division lies in the fact that the FPLA includes simple types of legal assistance (consultations, explanations, drafting of documents of non-procedural nature, etc.). These are non-unique undertakings, they can be provided by any person with legal education, as they are less formalized. To provide primary legal assistance, the status of an advocate is not required. This division made a distinction between unique and non-unique types of legal practice, in fact, between legal activity and legal practice.

The essence of the FLA provision relationship

The content of the relationship to the provision of the FLA has achieved a certain transformation in 2023, which is due primarily to the relevant social trends.

At the same time, the main problems of functioning of the said system for the most part have not been resolved.

In view of this, for the clarity of the current situation, the problems identified in 2022 are given below with notes on any changes.

#	The problem	Significance for the Bar	Solutions	Current state
1	The name of the CC does not reflect its purpose	The name “Coordination Center for Legal Aid Provision” defines the name of the institution that ensures the provision of all sorts of legal aid, and not limited to solely free ones. This has already led to authorizing the CC to oversight of mediation and advocates-mediators, as well as created the preconditions for the overarching management of all things legal aid, thus replacing the Bar (advocates' self-government and UNBA) with a state-run institution.	Amendments to the CMU Resolution of 06.06.2012 No. 504	The problem is not solved
2	The CC managed by a person subordinate to the Ministry of Justice	The FLA system, which cooperates with a large number of Ukrainian advocates and assumes managerial functions over them, is under the control of a person potentially forced to be guided not by the interests of the system and advocates, but rather by the needs and instructions of the MoJ, which are systematically contrary to the interests of the Bar.	Voluntary admission competition for the post of the CC Director alternatively, appeal of the MoJ's inaction to the court	The problem is partially solved: By amending par.16 of the Regulation on the Coordination Centre for Legal Aid Provision, according to which during the martial law the CC Director is appointed by the Minister of Justice without competition. In March 2023, Oleksandr Baranov was appointed as the CC Director

#	The problem	Significance for the Bar	Solutions	Current state
3	Obstruction of the CC Supervisory Board operation	The functioning of the system on a democratic basis and in compliance with the interests of the institutional strength of the Bar have been entrusted to a non-operating institution.	Voluntary reconstitution of the CC Supervisory Board and ensuring its participation in the admission competition for the position of the CC Director. Alternatively, appeal of the MoJ's inaction to the court	The problem is not solved
4	Implementation of the policy towards elimination of the Bar and UNBA from participation in any aspect of management of advocates in the FLA system : <ul style="list-style-type: none"> • Adoption of regulatory and other legislative acts regulating activities of advocates without the participation of UNBA; • Amendments to the standards of FLA provision of without the consulting of the Bar; • Conducting competitions for advocates willing to provide FLA without the involving UNBA (Bar self-government); • Reorganization of the FLA system, involvement of various partners in this process, provided that the UNBA is isolated from this process; 	Implementation of the intention to isolate UNBA from participation in the formation and implementation of state policy toward advocates has the following systemic negative consequences: <ul style="list-style-type: none"> • a significant reduction in the quality of regulation and management of relevant area of public policy; • institutional weakening of the Bar and, accordingly, the state human rights protection in Ukraine; • discrediting Ukraine as a state governed by the rule-of-law, before foreign and international partners, etc. 	Normative definition of specific areas of activity of the MoJ and the CC, to which UNBA should be involved; <ul style="list-style-type: none"> • appeal of legislative acts adopted with violation of the procedure without consultation with UNBA; • report on the state of interaction between the MoJ, the CC and the UNBA before the CMU, the Verkhovna Rada, the President of Ukraine, international organizations, etc. 	The problem is partially solved: In 2023, UNBA participated in the development of draft CMU Resolutions in the field of FLA; the CC and the MoJ participated in drafting UNBA regulatory acts.

#	The problem	Significance for the Bar	Solutions	Current state
5	Systematic and systemic attempts of the FLA system to interfere with the constitutional powers of the independent Bar (usurping the function of assessing the quality of legal aid; imposing disciplinary measures; administering services for advocates, etc.)	<p>The analysis of the FLA operation indicates the systemic development of mirroring a significant part of the UNBA's powers, derogating from the base line set by the law.</p> <p>This puts at risk the very existence of the Bar as an independent institution from the State</p>	<p>Report on the state of interaction between the MoJ, the CC and UNBA before the CMU, the Verkhovna Rada, the President of Ukraine, international organizations, etc.</p> <p>Implementing measures to identify the individuals encroaching on the independence of the Bar</p>	The problem is not only not solved, but deepened, in particular in terms of advocates providing legal assistance in the absence of a suspect
6	Excessive expansion of the FLA system	The work of an advocate is devalued, the institutional operation of the Bar undermined by an economically unjustified imbalance, advocates work in conditions of unhealthy competition, the undue influence of the State on the Bar increases	Significant legislative reduction of the number of the FLA recipients, as well as reduction of the number of cases in which it is provided	The problem is not only not solved but deepened – the system continues to expand.
7	The presence of a sizable number of real and potential corruption risks and their implementation in the system in the absence of the internal Anti-Corruption Program at CC	Advocates are thus purposefully placed in the conditions of dependence and feel their insecurity before the FLA system	<p>Adoption of the Anti-Corruption Program at the CC.</p> <p>Introduction of automated distribution of FLA orders.</p> <p>Creation of a mechanism for the Bar to exercise scrutiny over this area of the FLA operation</p>	The problem is not solved

#	The problem	Significance for the Bar	Solutions	Current state
8	The CC having authority over advocates-mediators	Strengthening the influence of the state over another group of advocates	Appeal to the CMU regarding the revision of the adopted decision and making appropriate changes to the relevant regulatory acts	The problem is not solved
9	Introduction of the state-run system managing advocates: <ul style="list-style-type: none"> • advocates are obligated to prepare explanatory and reporting notes; • the duty of advocates to report, explain, prove their position in the execution of the FLA order; • linear chain of subordination for advocates, without the right of the latter to know the criteria for concluding or not concluding contracts therewith, the real mechanism behind distribution of FLA orders, etc. 	Disregard of all foundational principles of legal practice and the institutional principles of Bar; shaping the Bar to lose its status of a non-state independent institution	Regulatory restriction preventing establishment of such a model of management of advocates. Providing explanations to advocates on measures adopted in response to state-centric approaches to cooperation with advocates	The problem is not solved
10	The absence of real equality of the contractual parties providing FLA	The predatory terms of the FLA contracts negate the necessary level of independence of advocates, demotivate them when providing FLA, create toxic dependence on the CC, RCs, Lcs	Approval of the new model FLA contract for advocates , approved by UNBA	The problem is not solved

#	The problem	Significance for the Bar	Solutions	Current state
11	Low pay for advocates providing FLA	<p>Violation of the constitutional right of advocates to receive pay for their labor.</p> <p>Humiliation of the Bar through the degrading of legal services.</p> <p>Killing motivation of advocates to provide high-quality legal services.</p> <p>Establishing a precedent in regulating the cost of legal services not through naturally occurring or self-governing means, but through imperative-state intervention</p>	<p>Amendments to the Resolution of the CMU “Issues of payment for services and reimbursement of expenses of advocates providing free secondary legal aid” dated 17.09.2014 No. 465, according to the Committee's conclusion</p>	The problem is not solved
12	Manipulating the FLA system of to form a procedural imbalance in criminal proceedings in favor of the prosecution	<p>By weeding out “inconvenient” advocates and eliminating advocates working under the contract, the defense is sometimes irrecoverably weakened to the level desired by the prosecution. This damages the system of justice and the Bar, which plays a leading constitutional role therein, because it is impossible to fulfill the latter under such conditions</p>	<p>Legislative improvement of the procedure for involvement of an advocate in an individual procedural action.</p> <p>Strengthening disciplinary liability of FLA advocates in the context of tipping the scales in favor of the prosecution</p>	The problem has not only remained, but also deepened, in particular due to the trend of excessively broad court interpretation of the concept of “abuse of rights” by advocates providing legal assistance on the basis of the contract

#	The problem	Significance for the Bar	Solutions	Current state
13	Interference with legal privilege (when RCs, LCs consider complaints against advocates when monitoring the quality, at times of accepting reports, etc.)	Leveling the basic guarantee of advocacy, toxic changes in the system of legal protection of the human rights in general	<p>Cancellation of any forms of quality monitoring on the part of FLA system.</p> <p>Strengthening the liability of advocates for the disclosure of legally privileged information</p>	The problem is not solved
14	Direct or indirect influence on the position of advocate in the case (through direct advice and instructions, quality monitoring, conditional payment, disciplinary complaint review, etc.)	Leveling the principles of legal practice, toxic changes in the system of legal protection of human rights in general	<p>Providing clarifications to advocates on the algorithm of legally countering attempts to influence their position in the case.</p> <p>Bringing to justice the persons guilty of influencing the position of advocate in the case</p>	The problem is not solved

So, of all the problems identified in 2022, only two problems were partially resolved. Other problems continued to exist and even got worse, despite the measures undertaken by UNBA.

In addition, in 2023, the destructive position of the RCs, LCs on the provision of FSLA in criminal proceedings for crimes against the foundations of national security became known.

Also, a certain projection into the area of FSLA provision has the general legal problem of the duration of the trial in criminal proceedings, which some law enforcement entities are trying to reduce to abuse of procedural rights by advocates.

An important method of combating the abuse of procedural rights by defenders providing legal assistance under the contract, some judges consider it to be the involvement of advocates from the FLA system instead; the problems of substantiating involvement of an FLA advocate in criminal proceedings, the interaction of FLA advocate and his contractual counterpart, the correct algorithms of procedural behavior, competition of the defenders and abuse of rights gained particular importance in 2023, but did not get a proper solution.

1.2. Current issues of functioning of the FPLA subsystem

For reference, we should note that the model of providing FPLA in Ukraine should be implemented in the following legal regime.

Thus, free primary legal aid is a type of state guarantee, which translate to informing a person about his rights, freedoms and duties, the procedure for their implementation and execution, restoration of rights in case of their violation and the procedure for appealing decisions, actions or inaction of state authorities, local self-government, their officials and officers(s. 1, Art. 7 of the Law of Ukraine "On FLA").

Types of FPLA:

- 1) provision of legal information;
- 2) providing advice and explanations on legal issues;
- 3) drafting of applications, complaints, and other legal documents (except procedural ones);
- 4) assistance in ensuring access of a person to secondary legal aid and mediation (s. 2 Art. 7 of the Law of Ukraine "On FLA").

Subjects entitled to receive FPLA: All persons under the jurisdiction of Ukraine (s. 1 Art. 8 of the Law of Ukraine "On FLA").

Entities providing FPLA: bodies of executive branch of power; local self-government; FLA centers specialized institutions for the provision of FLA, formed by local self-government, addressing the needs of the territorial community; private legal entities, which have the right to provide legal assistance, advocates and other professionals involved by local self-government in accordance with the procedure established by law (s. 1 Art. 9 of the Law of Ukraine "On FLA").

Procedure for applying for FPLA: requests for the FPLA shall be sent or submitted by entitled persons directly to the central and local executive bodies, territorial branches of central executive bodies and local self-government in accordance with their competence (s. 1, 2, 3 Art. 10 of the Law of Ukraine "On FLA").

Procedure for consideration of requests for FLA:

- § The general term of consideration of the request for FLA is 30 calendar days from the date of receipt thereof in case the request contains only a request for the provision of relevant legal information, - 15 days (s. 4, 5 Art. 10 of the Law of Ukraine "On FLA").
- § it is forbidden to set a fee for the provision of any kind of FPLA (including for the issuance of application forms, appeals, requests, certificates, other documents, the submission of which is required by the legislation for the realization of human and civil rights and freedoms (s. 6 Art. 10 of the Law of Ukraine "On FLA").
- § the body within five calendar days should send an appeal to the relevant body if the issues raised in the request are not within its competence, and clarify the procedure for filing request for the free secondary legal aid, if it is established that the person in question needs the FSLA (s. 7, 8 Art. 10 of the Law of Ukraine "On FLA").
- § Local self-government bodies are obliged to conduct a personal reception of persons who need FLA on issues within their competence on the fixed days and hours. The schedule of reception should be public (s. 1, 2 Art. 11 of the Law of Ukraine "On FLA").
- § personal reception is conducted by highly qualified employees who can clearly and clearly provide clarification of the provisions of the law and advice on the implementation of human and civil rights and freedoms and the performance of duties (part 1) 3 Art. 11 of the Law of Ukraine "On FLA").
- § bodies of executive power and local self-government may enter into contract with advocates and other professionals in the relevant field of law to enable FLA provision within the relevant locality. The procedure for outsourcing FLA to such professionals approved by the CMU (s. 7, 8 Art. 12 of the [Law of Ukraine "On FLA"](#)).

Until 2023, neither the procedure for involving advocates in the provision of FPLA, nor the procedure for rendering FPLA by local self-government were properly determined.

On 13.10.2023, by the CMU Resolution No. 1088 "Some Issues of Organization of Providing Free Primary Legal Aid by Local Self-government" adopted the "Procedure for Attraction by local self-government of Advocates and other Legal Professionals to providing Free Primary Legal Aid" and the "Procedure for providing Free Primary Legal Aid by the subjects created or involved under contracts by local self-government" were approved.

The draft resolution was prepared by the MoJ and the UNBA was invited to comment thereon. The initial version of the draft provided for four qualification requirements for advocates that may participate in the provision of FLA: the presence in the ERAU, 1 year working experience, participation in CLE training events and the absence of disciplinary penalties. At the same time, only two requirements set for other legal professionals (legal education, 1 year experience). Such requirements were considered discriminatory by UNBA, and therefore reasonable objections were made thereto and other provisions of the draft.

On 11.10.2023, the draft resolution was considered by the Government Committee on Economic, Financial and Legal Policy, Fuel and Energy, Strategic Industries and Law Enforcement and in the definitive version of the Procedure (see s. 5), all the requirements for advocates were dropped. But the comments on the procedure for assessing the quality, completeness, and timeliness of the provision of free legal aid were taken into account only partially. Thus, according to the drafters, local self-government had to monitor the FLA quality. As Deputy Minister of Justice Oleksandr Banchuk explained at that time, the one who pays for the work has to control its quality. At the same time, according to s. 2 Art. 25 of the Law of Ukraine "On the Bar and Practice of Law" to assess the FPLA rendered by advocates, the regional Bar Councils establish dedicated commissions. And local self-government bodies are allowed to file appeals. That is why the CMU called the last version of the proviso in s. 11 of the Procedure "a compromise": the work of advocates can be evaluated by both the Bar commissions and the local self-government bodies themselves.

This version of the Procedure for providing FLA contradicts the norms of the Law of Ukraine "On the Bar and Practice of Law," which clearly refers to the task of assessing the quality, completeness, and timeliness of the provision of FPLA by the advocates being vested with the Bar, not local self-government. In this regard, the BCU decided to address the CMU with the initiative to amend the Resolution of the Cabinet of Ministers of Ukraine dated 13.10.2023 No. 1088 in this regard.

The change has not yet been adopted.

Thus, the legal regime of interaction between advocates and local self-government bodies in the provision of FPLA defined as follows.

Procedure for involving advocates in the provision of FPLA:

§ carried out by an executive body or local self-government on the basis of the contract concluded upon completion of the procurement of services, carried out in accordance with the Law of Ukraine "On Public Procurement", other legislative acts in the field of public procurement, taking into account the restrictions defined by the Law of Ukraine "On Corruption Prevention" (s. 3 of the Procedure for Attraction by local self-government of Advocates and other Legal Professionals to providing Free Primary Legal Aid, approved by the CMU Resolution No. 1088 of 13.10.2023;

§ All advocates, listed in the URAU (Unified Register of Advocates of Ukraine) (ss. 1 s. 5 of the Procedure for Attraction by local self-government of Advocates and other Legal Professionals to providing Free Primary Legal Aid, approved by the CMU Resolution No. 1088 dated 13.10.2023).

The procedure for FPLA provision by advocates:

§ FPLA is provided orally during the submission of the request (as requested by the recipient) or in writing (mainly) (s. 3, 5 of the Procedure for providing Free Primary Legal Aid by the subjects created or involved under contracts by local self-government, approved by the CMU Resolution of 13.10.2023 No. 1088);

§ during the provision of the FPLA, the advocate follows the established procedure (consisting of at least 8 stages; written response, consultation, clarifications under the approved structure; drafting documents – in compliance with the specified requirements (s. 4, 6, 7, 8 of the Procedure for providing Free Primary Legal Aid by the subjects created or involved under contracts by local self-government, approved by the CMU Resolution of 13.10.2023 No. 1088).

Assessment of quality and completeness of FPLA:

§ according to the results of the provision of the FPLA, the advocates invites the applicant to leave feedback on the quality and completeness of such service by way filling out the questionnaire, or leaving a written review (s. 10 of the Procedure for providing Free Primary Legal Aid by the subjects created or involved under contracts by local self-government, approved by the CMU Resolution No. 1088 of 13.10.2023;

§ The quality indicators of legal aid, including FPLA, and the service quality may include:

§ the presence/absence of reasonable complaints against the advocate;

§ positive feedback on the outcomes of the services;

§ successful cases of resolving recipients' requests (legal need satisfied/outcome achieved/legal capacity strengthened);

§ confirmation witnessing the improvement of advocate's professional level;

§ timely provision of aid (the request considered within the established timeframe);

§ availability of aid and service (premises and workplace meet the established requirements, mobile legal service point operating periodically, available information stands and handouts, advocates has experience of online consulting, work within the approved schedule) (s. 10 of the Procedure for providing Free Primary Legal Aid by the subjects created or involved under contracts by local self-government, approved by the CMU Resolution No. 1088 of 13.10.2023.

Control over the activities of advocates by local self-government bodies can be carried out through:

- § monitoring the work of the legal aid provider;
- § collection and analysis of best practices;
- § monitoring of compliance with the procedure for providing services;
- § telephone survey of recipients (within one to two days after the recipient received the service);
- § processing recipients' questionnaire responses, which allows to collect primary data on the work of the legal aid provider;
- § analysis of the billable hours of the legal aid provider, spent on the provision of free primary legal aid;
- § analysis of data on the ratio of registered and processed requests.
- § where cases of recipient dissatisfaction occur, each case must be considered in detail in order to establish the presence or absence of violations on the part of advocate;
- § the mechanism for monitoring the advocate can be determined by local self-government bodies. In order to assess the quality, completeness and timeliness of the provision of free primary legal aid by advocates, local self-government bodies can apply to the relevant Commissions formed by the regional Bar Councils (s. 11 of the Procedure for providing Free Primary Legal Aid by the subjects created or involved under contracts by local self-government, approved by the CMU [Resolution No. 1088 of 13.10.2023](#)).

Since no models of interaction between the Bar and the State represented by local self-government in the organization of the provision of FPLA are implemented, by the decision of the BCU dated 16.12.2023 No. 121, a pilot project on the interaction of Bar self-government, local self-government in the organization of providing free primary legal aid by local self-government launched in 2024 in the Khmelnytskyi region. Also, the BCU approved the [Procedure for the Implementation of the said pilot project](#).

The objectives of the pilot project are:

- 1) introducing the new model for interaction between the state, local self-government institutions and Bar self-government around provision of the free primary legal aid;
- 2) creation of favorable conditions for effective provision of free primary legal aid by local self-government bodies;
- 3) creation of prerequisites for the introduction in Ukraine of unimpeded receipt of free primary legal aid provided by the local self-government;
- 4) practical implementation of regulatory requirements for cooperation efforts of the Bar and the State in determining and implementing state policy towards realization of state guarantees by advocates;
- 5) empirical formation of grounds for improving legislation on the interaction of bodies (institutions) of the state, local self-government, and Bar self-government in the provision of free primary legal aid.

The stages of the pilot project are:

- 1) the conclusion of a Memorandum (memoranda) between the parties of the pilot project and other bodies and institutions, defining the roles, forms, and scope of participation of each party contributing to its implementation;
- 2) joint preparation and implementation of the event(s) of information-explanatory, educational-methodical, organizational nature with local self-government bodies, aimed at improvement and optimization of providing free primary legal aid;
- 3) creation of a Register (database) of advocates, which may be involved by local authorities of Khmelnytskyi region in the provision of free primary legal aid;
- 4) training (CLE) of advocates involved by local authorities of Khmelnytskyi region in the provision of free primary legal aid;
- 5) organizational, methodological, and legal support of local self-government's involvement of advocates in the provision of free primary legal aid;
- 6) ensuring the effective assessment of the quality of providing free primary legal aid by advocates through the organization of interaction between local self-government of Khmelnytskyi region and the Commission for the Assessment of Quality, Completeness and Timeliness of Free Legal Aid at the Bar Council of Khmelnytskyi region;
- 7) preparation of proposals for improving the legislative definition and practical application in Ukraine of the said model of interaction of State bodies/institutions, local self-government, and Bar self-government in providing free primary legal aid.

Despite the urgency of creating models of interaction between state authorities, local self-government and Bar self-government, the implementation of such a pilot project to prior to resolution of the conceptual problems of the functioning of the FLA system in Ukraine seems not rational. Achieving the project's goal is possible only after solving global issues of cooperation between the Bar and the State, mentioned in this report, and therefore it is advisable to postpone the said pilot project accordingly.

1.3. Current issues of functioning of the FSLA subsystem

For reference, we should note that the model of FSLA providing in Ukraine should be implemented in the following legal regime.

Thus, free secondary legal aid is a kind of state guarantee, creating equal opportunities for access to justice (s. 1 Art. 13 of the Law "On FLA").

Forms of FSLA:

- 1) legal defense;
- 2) representation of interests the persons entitled to free secondary legal aid in courts, before other state bodies, local self-government, before other persons;
- 3) preparation of documents of procedural nature (s. 2 Art. 13 of the LoU "On FLA").

Recipients of the FSLA: 29 categories of persons, including adults with average monthly income not exceeding 2 minimum subsistence levels; children; persons subjected to administrative arrest and persons under administrative arrest; persons subjected to criminal prosecution (in cases established by law); victims of a set list of crimes; as well as socially vulnerable categories of persons (refugees, internally displaced persons, etc.) (s. 1, 2, 3 Art. 14 of the LoU "On FLA").

Subjects of the right to the FSPA in some cases have the right to receive such assistance no more than six times during the budget period and at the same time under no more than six decisions to grant FSLA adopted by the RCs and LCs (s. 4 Art. 14 of the LoU "On FLA").

FSLA providers:

- 1) the FLA centres;
- 2) advocates included in the FSLA Register of Advocates (Article 15 of the LoU "On FLA").

FLA system consists of:

- § regional centers;
- § local centers;
- § interregional centers.

Such centers are established by the Ministry of Justice and are territorial departments of the CC (s. 1 Art. 16 of the LoU "On FLA").

The powers of the FLA centers:

- § independent provision of legal services; ;
- § ensuring of legal succession;
- § adopting decisions granting the FSLA provision;
- § ensuring the participation of the defender, other legal representative in the proceedings established by law;
- § entering into contracts with advocates;
- § issuance of orders confirming powers of the defender or lawful representative;
- § adoption of various kinds of decisions regulating the process of granting FSLA (Art. 1, Art. 17 of the LoU "On FLA").

The procedure and conditions for concluding contracts with advocates providing FSLA:

- § the contract is concluded with an advocate practicing individually or as a part of a firm or law office, included in the FSLA Register of advocates;
- § the contract to be concluded with an advocate on the following conditions:
 - § the justified need to involve an advocate in providing free secondary legal aid on a regular basis, taking into account the needs of the relevant locality, ensuring access of individuals to free secondary legal aid and continuous improvement of its quality;
 - § advocate having no disciplinary penalties imposed in the last year;
 - § advocate participating in the continuing legal education for advocates, organized during the current or previous budget period by the Coordination Center for Legal Aid Provision or the RCs/LCs (except for advocates with whom the contract is concluded for the first time);
 - § the absence of reasonably substantiated disciplinary complaints against the advocate received by the RC/LC and considered in accordance with the competence during the year (except for advocates with whom the contract is concluded for the first time).
- § the contract is concluded with the advocate according to the established form for a set period of time within the budget period, and in terms of payment for services and reimbursement of costs – until the completion of the orders issued on the basis of the contract, submission of reports, full calculation of payment due;
- § FSLA, provided in accordance with the contract, must comply with the legislation, established standards of FLA quality and the Rules of Professional Conduct (the Procedure and Conditions for Concluding Contracts with Advocates providing FSLA, approved by the Cabinet of Ministers of Ukraine of 19.12.2012 No. 1214 (as amended on 07.11.2023)).

A template contract with an advocate, the terms of which can not be actually changed, provides for: 30-case limit for assigning orders; the advocate is obligated to standby on duty according to schedule, in particular at night, on weekends, holidays and non-working days; in case of involvement in an individual procedural action in the manner prescribed by Art. 49 of the Criminal Procedure Code of Ukraine, to coordinate the legal position with the previously involved defender(s), taking into account the Rules of Professional Conduct; advocate is under obligation to immediately notify the Centre about the emergence of a conflict of interest during the provision of FSLA, the existence of grounds for termination of the provision of FSLA or advocate substitution, the planned long leaved of absence, change of its residence address, change of the corporate address, means of communication (phone number, e-mail, etc.); the duty of an advocate to participate in the training of advocates organized by the centers of the FLA system; the right of the centers of the FLA system to monitor the quality, completeness and timeliness of the provision of FSLA (CMU Resolution of 19.12.2012 No. 1214 (as amended on 07.11.2023)).

Organization of FSLA provision:

- § After the decision to grant FSLA provision, the FLA center appoints an advocate;
- § the powers of the advocate are confirmed by the order issued by an FLA center and/or power of attorney (s. 1, 2 Art. 21 of the LoU "On FLA").

The lawyer providing FSLA has the right to:

- 1) to defend in criminal proceedings during pre-trial investigation and judicial proceedings on the basis of the instruction of the FLA center;
- 2) to participate in the consideration of an administrative offense case on the basis of the order of the FLA center;
- 3) represent the rights and legitimate interests of persons in need of free secondary legal aid in courts, other state bodies, local self-government, before other persons;
- 4) to request and receive documents and other materials or copies thereof, necessary for the provision of free secondary legal aid in courts, other state bodies, local self-government, before other persons;
- 5) to collect information for the purpose of using them in the protection of the rights and legitimate interests of persons entitled to receive FSLA;
- 6) get acquainted with the relevant documents at state authorities, local self-government, enterprises, institutions, and organizations to ensure effective legal protection, except documents containing state secrets;
- 7) to inform the FLA Center about the occurrence of circumstances justifying the termination of FSLA provision as in cases provided for by [section one of Article 23 of the Law of Ukraine "On FLA"](#);
- 8) for the proper payment for the FSLA provision.

The advocate, providing FSLA, enjoys all the rights and guarantees established by [the Law of Ukraine "On the Bar and Practice of Law"](#), other laws of Ukraine (s. 1, 2 Art. 25 of the LoU "On FLA").

Duties of advocates providing FSLA:

§ strictly comply with the requirements of the Constitution of Ukraine, this Law, international treaties of Ukraine, and other legal acts;

§ to provide quality FSLA;

§ not to disclose confidential information about the person, which became known in connection with the FSLA provision.

The advocate, providing FSLA, bears all the duties established by the Law of Ukraine "On the Bar and Practice of Law", other laws of Ukraine (incl. 1, 2 Art. 26 of the LoU "On FLA").

The subject entitled to FSLA has the right to:

1) address the FLA center with a request for the provision of FSLA;

2) receive information from the FLA center on documents that must be submitted prior to decision granting provision of FSLA;

3) to obtain a copy of the decision on granting (denial) FSLA;

4) to obtain clarification on the procedure for appealing against the decision on denial of FSLA;

5) timely receive high-quality FSLA;

6) continuously receive FSLA in case of substitution of advocate or employee authorized by the FLA center;

7) to receive FSLA within the limits of national remedies (s. 1, Art. 26-1 of the LoU "On FLA").

The subject entitled to FSLA is obligated to:

1) to timely submit to the FLA center truthful information in full, necessary for the organization of such aid;

2) to inform the FLA Centre about termination of circumstances or grounds, entailing entitlement of such person to the FSLA as provided by Article 14 of LoU "On FLA", as well as on involvement of another defender (representative);

3) reimburse the actual costs associated with the provision of FSLA, in case of termination of FSLA provision in connection with providing false information, which became legal basis for termination of such assistance;

4) bear all necessary legal/procedural, other costs in the case, except for the costs of paying for the services of FSLA advocates and reimburse the costs associated with its provision, and translation services;

5) to appear in the time and at place determined by the FLA Center for organization of provision of such aid (s. 2 Art. 26-1 of the LoU "On FLA").

Grounds for termination of the FSLA provision:

- 1) a person has given false information in order to be classified as entitled to FSLA;
- 2) the circumstances or grounds entailing entitlement of a person to receive FSLA ceased to exist;
- 3) the person enjoys the defense provided by another defender or representative in the same case;
- 4) the person has exhausted all national remedies in the case;
- 5) the person refused to receive the FSLA, except cases where participation of a defender (advocate) is mandatory;
- 6) the person to whom the FPLA is granted has died, is declared missing or declared dead, except for cases concerning rehabilitation of the deceased person, cancelation of the court decision on recognition of an individual as missing or cancelation of the court decision on declaring an individual dead;
- 7) the person has submitted a request regarding the same legal issue for which the person has already been provided with the FLA, which became known after the decision granting the provision of FSLA;
- 8) the person fails to provide (without justification) the documents and evidence substantiating claims of the person to protect its rights;
- 9) the person does not fulfill the duties of the FSLA recipients' FSLA without justification, those defined in paragraphs 1, 2, 4, 5 of s.2 of Article 26-1 of the Law of Ukraine "On FLA" (s. 1 Art. 23 of the LoU "On FLA").

The procedure of termination of FSLA provision:

- § The provision of FLA is terminated on the basis of the decision of the FLA center;
- § If a person has exhausted all national remedies in the case, has submitted a repeated request about the same legal issue for which the FLA has already been provided, without justification fails to provide documents and evidence, that substantiate the person's claims for the protection of rights, the decision of the FLA center on the termination of the FSLA provision is adopted on the basis of a legal opinion drawn up by an advocate or employee of such a center;
- § if a person enjoys defense by another defender or representative in the case where a defender or representative is already appointed, the decision of the FLA center is adopted on the basis of a legal opinion drawn up by an advocate or employee of the center, attached with a copy of the document confirming the powers of another defender/representative involved by a person in this case. A copy of the decision to terminate the provision of the FSLA is sent to the investigator, the inquirer, the prosecutor, the investigating judge, or the court;
- § the provision of FSLA is terminated in case the advocate fulfilled his obligations in case (s. 1, 2, 3, 5 Art. 23 of the LoU "On FLA").

Reasons for replacing advocates providing FSLA:

- § illness, complete or partial loss of ability to work, death;
- § improper performance by the advocate of his obligations under the terms of contract;
- § refusal of the advocate to execute the order/decision of the FSLA center on the grounds provided by law;
- § change of jurisdiction of proceedings or cases or criminal offense;
- § termination of the contract on the provision of FSLA;
- § suspension or termination of the right to practice law;
- § exclusion of an advocate from the FSLA Register of Advocates;
- § the presence of other grounds provided for by law (s. 2 Art. 24 of the LoU "On FLA").

Substitution of advocates providing FSLA:

- § the advocate providing FSLA can be substituted by an advocate or employee of such a center by the decision of the FLA center;
- § substitution of an advocate should not breach the continuity of the FSLA provision.
- § where decision to substitute an advocate is adopted due to improper performance of obligations by advocate under the terms of the contract, the FLA center may suggest the Coordination Center for Legal Aid Provision to exclude such an advocate from the FSLA Register of Lawyers (s. 2, 3, 4 Art. 24 of the LoU "On FLA").

It should be noted that in 2023 the described model has undergone certain changes, namely:

- § expanded list of subjects entitled to the right to free secondary legal aid;
- § changes have been made to the grounds for termination of the FSLA provision;
- § the reorganization of the FLA bodies has begun;
- § The rights and obligations of the subjects entitled to FSLA, etc., have been determined.

The proposed model of FSLA is not perfect. Among its main shortcomings, the following should be noted:

- 1) an unreasonably wide range of cases of FSLA provision;
- 2) adoption of normative acts on provision of FSLA and making changes thereto ignoring the position of the Bar;
- 3) realization of the subordination model of relations of advocates with bodies of FSLA;
- 4) absence of duties assigned to the bodies of FSLA in the system of relations with advocates;
- 5) interference with the sphere of exclusive powers of the Bar self-government by usurping the power to conduct quality control of the FSLA provision in the form of monitoring;
- 6) low, unfair level of payment for the services of advocates, compulsion to provide unpaid services, permanent delays in payment for the FSLA provided

UNBA has repeatedly initiated amendments to the legislation on FLA, but no initiatives of the Bar in this area have not been implemented yet.

CHAPTER II

UNBA'S ACTIVITY IN THE SPHERE OF FUNCTIONING OF THE FLA SYSTEM

2.1. UNBA's activity in the sphere of FLA provision

Currently, the functioning of the FLA system in Ukraine creates the most issues in interaction between the State and the Bar.

The legally guaranteed independence of the Bar from the State under the current model of the FLA system is non-existent. This defines the FLA system as a focus of UNBA's special attention, and the issue of interaction therewith is a subject of constant attention of the BCU.

In total, from 2012 to 2023, 71 decisions of the BCU concerning the FLA system were adopted.

In the period from 2012 to 2022, the Bar Council of Ukraine adopted 58 decisions. During 2022 – 2023 – 33 decisions (2022 – 20, 2023 – 13).

The following table lists such decisions of the BCU with the definition of their main content, revealing the essence of UNBA activities in the field of providing FLA through the highest permanent body of the Bar self-government (as of 01.01.2024).

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
1	No.35 dated 17.12.2012	On approval of the Regulation on the Commission for the Assessment of Quality, Completeness and Timeliness of the FLA provision by advocates	The Regulation on the Commission for Assessment of Quality, Completeness and Timeliness of the FLA provision by advocates has been approved	Terminated on the basis of the BCU decision No.281 from 15.12. 2017
2	No.84 dated 16.02.2013	On ensuring compliance with the requirements of the laws "On the Bar and Practice of Law" and "On Free Legal Aid" (regarding participation in the organization and holding of competitions for the selection of advocates involved in the provision of FSLA)	Recommendations on the implementation of the CMU Resolution No.1362 dated 28.12.2011 have been approved. The regional Bar Councils were proposed to ensure the inclusion of representatives of the Bar in the composition of the competition commissions formed by the Main Departments of Justice for the selection of advocates for the FSLA, as well as to take an active part in the organization of the CC's information and explanation campaign and to promote the participation of advocates in competitions for the selection of advocates for the provision of FLA	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
3	No.193 dated 27.07.2013	On ensuring the right of advocates to the proper payment for the provision of FSLA	<p>It was noted that the current mechanism of payment for services and reimbursement of expenses of advocates providing FSLA requires improvement in order to establish the proper level of payment for the activities of advocates providing FSLA and support the proposed changes to the CMU Resolution of 18.04.2012 No.305 "Issues of Payment for Services and Reimbursement of Expenses of Advocates, providing FSLA" taking into account the UNBA's comments on the need to increase the amount of payment per billable hour to the level of at least 5 % of the minimum wage determined by law. It was decided to petition the Prime Minister of Ukraine with the demand to take measures to urgently repay and prevent in the future the occurrence of debts to advocates, to increase the amount of payment for services and to expand the list of costs reimbursed to advocates providing FSLA, as well as to adjust the mechanism for calculating the amount of remuneration of advocates providing FSLA, in order to establish a fair level of payment for the services of advocates in each of the cases of provision of FSLA. In order to comply with the guarantees of observing professional legal privilege, it was decided to consider inadmissible to allow any inspections, studies, generalizations of proceedings, dossiers, notes, developments, etc. by other advocates and representatives of public organizations, except for properly authorized in accordance with the Law of Ukraine "On the Bar and Practice of Law"</p>	S. 4 of this decision is excluded on the basis of decision No.230 of 27.09.2013

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
4	No.197 dated 27.07.2013	On cooperation with the Ministry of Justice on the provision of free legal aid	A working group on the development of a Memorandum of Cooperation with the Ministry of Justice on the provision of FLA and the development of changes to the Law of Ukraine "On Free Legal Aid" about the quality standards of legal aid	
5	No.230 dated 27.09.2013	On the conclusion of a Memorandum of Cooperation between the UNBA and the Ministry of Justice of Ukraine in the field of free legal aid	It was decided to agree with the proposal of the Ministry of Justice to conclude a Memorandum of Cooperation between the UNBA and the Ministry in the field of FLA. The text of the Memorandum has been approved and the UNBA President has been authorized to sign the Memorandum	
6	No.267 dated 17.12.2013	On the approval of the draft Quality Standards for the Provision of Free Secondary Legal Aid in criminal proceedings	The draft Quality Standards for the Provision of FSLA in criminal proceedings developed by the working group was approved. It is taken into account that compliance with the standards is mandatory only when the advocates provide FSLA, in other cases they can be applied by advocates on a voluntary basis. A working group was formed to analyze the practice of applying Standards in order to enable further consideration of the said issue by the BCU in the composition approved by the Protocol	
7	No.31 dated 02.04.2014	On the establishment of a working group to verify compliance of the Ministry of Justice with the Memorandum of Cooperation between the UNBA and MoJ in the field of free legal aid	A working group was established to verify compliance with the Ministry of Justice with the implementation of the Memorandum of Cooperation. Authorized the BCU President to address the Ministry of Justice. The BCU members were authorized to receive information from advocates in the regions on the availability of arrears of funds to advocates for the provided FSLA. The results of the work to be considered at the regular meeting of the BCU	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
8	No.73 dated 04.07.2015	On the establishment of a Commission on the Implementation of the Memorandum of Cooperation between Ukrainian National Bar Association and the Ministry of Justice of Ukraine in the field of free legal aid	The Commission on Implementation of the Memorandum of Cooperation between UNBA and the MoJ in the field of FLA was established. The following areas of work and tasks of the Commission were defined: Analysis of the UNBA-MoJ Memorandum of Cooperation for non-fulfillment or improper fulfillment by the parties of its provisions; legal revision of the Law of Ukraine "On FLA" and analysis of its provisions for compliance with the Law of Ukraine "On the Bar and Practice of Law" and other acts that regulate the issues of the Bar; drawing up conclusions on the results of the work and submitting them for consideration by the BCU	
9	No.74 dated 04.07.2015	On the establishment of the Committee on Free Legal Aid at Ukrainian National Bar Association	UNBA Committee on Free Legal Aid was established The authority to approve the personal composition of the Committee and the Committee Regulation delegated to the President of the BCU	
10	No.125 dated 13.11.2015	On approval of the report of Ukrainian National Bar Association of "The system of free legal aid in Ukraine: current problems, recommendations for its reform".	Approved the report of UNBA "System of free legal aid in Ukraine: current problems and recommendations for its reform." It is entrusted to the BCU President to summarize and amend the UNBA report on the basis of submitted proposals, additions and/or comments	
11	No.103 dated 24.04.2016	On approval of the clarification on certain conditions for the application of the provisions of the Law of Ukraine "On the Bar and Practice of Law" and the Rules of Professional Conduct	Clarifications on certain conditions of application of the provisions of the Law of Ukraine "On the Bar and Practice of Law" and the Rules of Professional Conduct have been approved. It has been brought to the attention of the CC that the advocate, who stopped providing legal assistance unilaterally due to the conflict of interests, is not responsible for the client's defense thereon out, the duty of ensuring, which is borne by the FSLA center, and fulfilled by appointing another advocate	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
12	No.111 dated 24.04.2016	On approval of the Conclusion on violation of rights and guarantees of legal practice, corruption component in the creation and functioning of the system of free legal aid in Ukraine	The Conclusion on violation of rights and guarantees of legal practice, corruption component in the creation and functioning of the system of free legal aid in Ukraine has been approved. The UNBA, BCU President was instructed to send a letter to the President of Ukraine, CMU, other state bodies with information on violations of rights and guarantees of legal practice in Ukraine, corruption component in the creation and functioning of the FLA system in Ukraine, as well as on the need to reform the FLA in Ukraine	
13	No.118 dated 23.04.2016	On approval of the Clarification on the possibility of providing legal aid free of charge (Pro bono) by an advocate, law office, or law firm	The Clarification on the possibility of providing legal aid free of charge (pro bono) by an advocate, law office, or law firm	
14	No.24 dated 04.02.2017	On particular issues of providing free legal aid	It is explained that the advocate providing FSLA on the basis of the order of the center is obliged to proceed from the preferences of the person to whom he is entrusted to provide FLA. The inducement by the advocate, who is engaged as a defense counsel for an individual procedural action, of a person to whom he or she provides legal aid to conclude an agreement in this proceeding is prohibited. The advocate is prohibited from entering into a contract for the provision of professional legal assistance in this case	
15	No.186 dated 05.08.2017	On the creation of a working group on the development of quality standards for the provision of free legal aid	A working group on the development of quality standards for the provision of free legal aid was established, instructing the BCU, UNBA President to staff it according to the personal submissions of advocates	In the future, quality standards to be approved by decision No.219 of 23.09.2017
16	No.218 dated 23.09.2017	On the establishment of a working group on the investigation of issues in the appeal of advocates of the AVERLEX law firm	A working group on the research of the issues raised in the appeal of advocates of the AVERLEX law firm was created. The Working Group upon completion of the work is instructed to inform the BCU to carry out further actions and make appropriate decisions	The results of the work of the WG are approved by the decision No.285 of 15.12.2017

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
17	No.219 dated 23.09.2017	On approval of the quality standards for the provision of FSLA in civil, administrative cases and representation in criminal proceedings	Quality standards for the provision of FSLA in civil, administrative cases and representation in criminal proceedings were approved	
18	No.281 dated 15.12.2017	On approval in the new edition of the Regulation on the Commission for the Evaluation of Quality, Completeness and Timeliness of the Provision of Free Legal Aid by advocates	The updated version of the Regulation on the Commission for the Evaluation of Quality, Completeness and Timeliness of the Free Legal Aid by Advocates has been approved. The decision of the BCU from 17.12.2012 No.35 was recognized as invalid	The Regulation approved by decision No.35 of 17.12.2012 have lost validity
19	No.285 dated 15.12.2017	On the results of consideration of the appeal of advocate at AVERLEX law firm Serdyuk Vitaliy Anatoliyovych	<p>It is clarified that the refusal to defend in case of acceptance of the order or involvement in an individual procedural action for specific objective reasons may result in violation of the rights and legitimate interests of this person or harm its position of defense.</p> <p>An advocate involved in an individual procedural action must immediately after receiving the order take all possible steps to determine which advocate represents the interests of the client in this case.</p> <p>The advocate during participation in an individual procedural action has no right to deviate from the position of the client</p>	
20	No.21 dated 09.02.2018	On consideration of the appeal of advocate O. Horoshinsky of GORO Legal law firm. on the protection of professional rights and guarantees of legal practice, other related issues	<p>The President of the BCU was instructed to address the Prosecutor General of Ukraine to consider the merits of the appeal of advocate Horoshinsky O. O.</p> <p>It is recommended that advocates, in the prescribed manner, apply with an appropriate appeal to the Commission regarding advocate Angelin I. appointed by the FLA Center to conduct the appropriate audit; additionally inform the judicial and law enforcement agencies about the decisions adopted by the BCU No.24 of 04.02.2017, No.285 of 15.12.2017</p>	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
21	No.47 dated 30.03.2018	On the results of consideration of the appeal of the advocate of Goro Legal O. Horoshinsky and advocate at AVERLEX Prosyanyuk O. on the protection of professional rights and guarantees of legal practice	The President of the BCU was instructed to address the Prosecutor General of Ukraine with a statement on preventing the pressure of the Prosecutor General on the advocates of O. Horoshinsky and O. Prosyanyuk	
22	No.49 dated 30.03.2018	On the results of consideration of the appeal of Deputy Prosecutor General of Ukraine A. Stryzhevskya regarding the activities of the Regional Center for the FLA provision in the city Kyiv and other related issues	Directed to Deputy Prosecutor General of the PGOU A. Stryzhevskya. the conclusion of the UNBA FLA Committee dated 16.02.2018	
23	No.64 dated 01.06.2018	On the results of the consideration of the appeal of advocate V. Serdyuk on the interpretation of certain provisions of the Rules of Professional Conduct	It is explained that the advocate should proceed from the priority of the client's interests and be persistent and principled in defending the interests of the client as at the stage. pre-trial investigation, and during the trial, not to concede independence in compliance with the will of the client. The advocate on behalf of the body (institution) authorized by law to provide the FLA should take an active position in finding out the circumstances of the case preceding his involvement in the case (proceedings), and in case of abuse of the norm of Article 49 of the CPCU or its violation by the pre-trial investigation or court, react thereto in the forms provided for by applicable law and/or acts of BCU, UNBA	
24	No.75 dated 01.06.2018	On the results of consideration of the application of advocate O. Klymenko on groundless refusal to conclude a contract by the Regional Center for Free Secondary Legal Aid in Lviv region	It was decided to send an appeal to the Cabinet of Ministers of Ukraine and the Ministry of Justice to prevent violations of the rights of advocates providing legal assistance on behalf of the body; send materials of Mr. Klymenko's statement to the UNBA Committee on Anti-Corruption Policy and compliance and the Committee on Legislative Initiatives on Advocacy	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
25	No.77 dated 01.06.2018	On the creation of a special temporary commission for the study of the issues raised in the complaint by O. Kushnir concerning the requirement to verify the circumstances regarding improper financing in the FLA system, ensuring the settlement of debts for services provided on behalf of the body (institution) authorized by the law to provide FLA and other related issues	A special temporary commission for the study of those raised in the complaint Kushnir O. was created. The working group was instructed to send a letter to advocate lawyer Kushnir O. with request to provide copies of appeals to the competent authorities on the issue of checking the circumstances regarding improper financing in the FLA system; on the results of the work to inform the BCU for decision-making in the future	
26	No.128 dated 29.04.2018	On the establishment of a working group to study the issue of concluding contracts with the FSLA centers by advocates	A working group on the issue of concluding contracts with the FSLA centers by advocates has been established. The Working Group on the results of its work and conclusions is instructed to inform the BCU	
27	No.129 dated 07.09.2018	about the peer review concept in the FLA system	The position of advocates of Khmelnytskyi region on the disapproval of the “peer review concept in the FLA system” was sustained. It was decided to consider unacceptable for approval and implementation of the Peer Review concept in the FLA system	
28	No.136 dated 08.09.2018	On the establishment of a working group on the study of issues raised in the collective complaint of FSLA advocates in Kharkiv region	A working group on the study of the issues raised in the collective complaint of advocates of free secondary legal aid in Kharkiv region was created	
29	No.163 dated 12.10.2018	On the removal from agenda of the issue of the results of work and conclusions of the working group on the study of the issues raised in the collective complaint of advocates of Kharkiv region	It was decided to remove from the agenda of the BCU meeting the issue of the results of the work and conclusions of the working group on the study of the issues raised in the collective complaint of advocates providing FSLA in Kharkiv region	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
30	No.179 dated 13.10.2018	On consideration of the appeal of the Chair of the Bar Council of Volyn region Rudenko G. concerning the appeal of advocates of the region providing free secondary legal aid, on the violation of their professional rights and guarantees of legal practice	It was decided that the appeal of the Chair of the Bar Council of Volyn region on violation of the rights of advocates by the Regional FSLA Center (untimely remuneration of advocates, uneven distribution of orders) should be submitted to the FLA Committee at the UNBA for a detailed study of the issue raised in the appeal	The appeal was considered on the merits at the meeting of the BCU on 13.12.2018 and the decision No.221 was adopted
31	No.221 dated 13.12.2018	On the appeal of the Chair of the Bar Council of Volyn region Rudenko G. concerning violations of professional rights and guarantees of legal practice in the region by the Regional Center for Free Secondary Legal Aid	It was decided to send an appeal to the Cabinet of Ministers and the Ministry of Justice to eliminate violations of the rights of advocates providing legal assistance on behalf of the body authorized by law to provide FSLA. The materials were directed to the UNBA Committee on Anti-Corruption Policy and Compliance and the Committee on Legislative Initiatives on Advocacy for study. An appeal to the NACP was sent with a request to conduct anti-corruption expertise. The Committee of the FLA under UNBA has been entrusted to implement the decision of the BCU in the relevant part and hold a joint meeting with the CC	
32	No.10 dated 14.02.2019	No.9055 the draft of Resolution concerning Non-admissibility of infringement of the rights of Ukrainian advocates providing free legal aid for it to be considered by the 2019 Congress of Advocates of Ukraine	No.9055 the draft of Resolution concerning Non-admissibility of infringement of the rights of Ukrainian advocates providing БПД for it to be considered by the 2019 Congress of Advocates of Ukraine	
33	No.21 dated 14.02.2019	On the approval of the draft Resolution on the settlement of social protection of advocates, the draft resolution on the inadmissibility of the adoption of the draft Law of Ukraine "On the Bar and Practice of Law" No.9055, the draft resolution on the inadmissibility of violation of the rights of advocates of Ukraine in the FLA system for consideration by the Congress of Advocates of Ukraine in 2019	The draft resolution on the settlement of social protection of advocates was approved. Directed for consideration at the Congress of Advocates of Ukraine	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
34	No.36 dated 12.04.2019	On measures of liquidation of debts to advocates, providing free secondary legal aid, and ensuring their rights are respected	<p>It was decided to appeal to the Cabinet of Ministers of Ukraine and the Ministry of Justice with a request to immediately eliminate violations of the rights of the advocates providing FSLA.</p> <p>The Committee on FLA under UNBA has been instructed to prepare a sample of the draft statement of claim for debt collection by FSLA advocates</p>	
35	No.58 dated 12.04.2019	On consideration of the letter of the Chair of the Council of advocates of Ternopil region on pressure on advocates by officials of centers for the provision of FSLA	<p>It is entrusted to the head of the BCU to apply to the Ministry of Justice with a request to take measures to eliminate any biased actions of officials of the centers for the provision of FSLA. – to address the National Agency for Corruption Prevention with the request to take measures within their powers for elimination of corruption risks in the work of the Ternopil Regional Center for FSLA. Attention was paid to Article 5 of the Law of Ukraine “On the Bar and Practice of Law”</p>	
36	No.74 dated 26.06.2019	On ensuring the observance of the rights of advocates, providing free secondary legal aid	<p>Decided to address the law enforcement agencies with the request to take measures against the misuse of public funds by the regional FSLA Centers and against violations of advocates' rights to receive due remuneration for their services; An open statement of the BCU on ensuring the observance of the rights of advocates and guarantees of advocacy in the FLA system, including the elimination of debt to advocates providing FSLA, and the impossibility of pressure on them by the heads of regional centers, has been approved</p>	
37	No.54 dated 05.08.2020	BCU has decided on the draft Law of Ukraine “On Amendments to Certain Legislative Acts to Facilitate Access to Free Legal Aid and Improve the Quality thereof.”	<p>The President of the BCU was instructed to send an appeal to the Ministry of Justice on the inadmissibility of the introduction of an additional model in the proposed draft law for advocates of a new tool for ensuring the quality of the FLA by introducing a mechanism for assessing the quality of legal aid provided through the peer review commissions of independent assessment of the quality of the provision of FSLA and selected them on a competitive basis by advocates-experts.</p> <p>The President of the BCU was instructed to send to the Ministry of Justice proposals, comments, and additions to the draft Law of Ukraine “On Amendments to certain Legislative Acts on simplification of access to the FLA and improving the quality of its provision,” received from the UNBA Committee on FLA and advocates from all over Ukraine</p>	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
38	No.33 dated 31.03.2021	The BCU decided to address the President of Ukraine, the Speaker of Verkhovna Rada, the Verkhovna Rada Committee on Legal Policy, the Prime Minister of Ukraine, the Minister of Justice of Ukraine on returning the draft Law of Ukraine "On amendments to Certain Legislative Acts on Facilitating Access to Free Legal Aid and improving the Quality of its provision", registered 19.02.2021, No.5107 and registered 09.03.2021, No.5107-1, for further elaboration or their withdrawal (dismissal), according to which the President of the Bar Council of Ukraine, Ukrainian National Bar Association Lidiya Izovitova was tasked accordingly.	The President of the BCU, UNBA has been instructed to send an appeal to the President of Ukraine, the Speaker of Verkhovna Rada of Ukraine, the Chair of Verkhovna Rada Committee on Legal Policy, the Prime Minister of Ukraine, the Minister of Justice on the return of the draft Law of Ukraine "On Amendments to certain Legislative Acts on simplification of access to the FLA and improvement of the quality of its provision" and development, submission to the Parliament and adoption of the draft law on granting the BCU advisory opinions on the draft laws on the Bar and Practice of law	
39	No.30 dated 16.03.2024	On the suspension of s. 19, 20 of the Procedure for CLE for advocates for the period of martial law in Ukraine	The s. 19, 20 of the Procedure, approved by the decision of the Bar Council of Ukraine No.63 of 03.07.2021, as amended, for the period of martial law in Ukraine, has been suspended	Changes made by the decision of the BCU No.181 from 27.12.2022 (the decision indirectly concerns the issues of the FLA from 27.12.2022)
40	No.70 dated 02.08.2022	On approval of the Clarification regarding interference of FLA with the legal position of the advocate when considering petition for the election of a preventive measure	Clarification has been approved. The work of the working group on the issues of interference of the FLA bodies with the legal position of the advocate, as well as problems that arise when paying for the activities of advocates in the FLA system, has been continued	
41	No.105 dated 05-06.09.2022	About the appointment of Kadenko O. as Chair of the Committee on FLA	Kadenko O. appointed as the Chair of UNBA FLA Committee	
42	No.113 dated 05.09.2022	As for assistance in the organization of legal protection of orphans and children deprived of parental care, from Ukraine, which in the conditions of war were forced to go abroad	In order to establish further cooperation between UNBA and the Ministry of Justice on assistance in organizing legal protection of orphans and children deprived of parental care, from Ukraine, which in times of war were forced to go abroad, was entrusted to the Committee on FLA to prepare a response to the request of Deputy Minister of Justice I. Mudryi from 19.08.2022 and submit it for signature to the President of UNBA, BCU	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
43	No.124 dated 04.11.2022	On Amendments to the procedure for maintaining the Unified Register of Advocates of Ukraine (including data of advocates listed in the FLS Register to the URAU)	<p>Amendments to sub-paragraph 3.1.7 of Article 3 of the Procedure, approved by the decision of the Bar Council of Ukraine No.74 of 22.08.2022, adding it after the words “Information on training...” words “Information on advocates included in the FSLA Register of Advocates, and/or have concluded a contract for the provision of FSLA on a permanent basis or a contract for the provision of FSLA on a temporary basis.”</p> <p>The ten-day period from the date of inclusion of an advocate in to FSLA Register of Advocates, and/or the conclusion of a contract for the provision of FSLA on a permanent or temporary basis, advocates must file an application with a notice of inclusion in the FSLA Register of Advocates, and/or the conclusion of a contract for the provision of FSLA on a permanent or temporary basis (with the details of the relevant contract) to the regional Bar Council at the workplace of the advocate, or the BCU, or through the personal cabinet in the URAU The ten-day period from the date of publication of this decision for the initial submission to the Bar Council of the region at the address of the workplace of the advocate or the BCU, or through the personal web cabinet the notification of the inclusion of the advocate in the FSLA Register of advocates and/or the conclusion of a contract for the provision of FSLA on a permanent basis or temporary basis. The Procedure for Maintaining the URAU has been amended accordingly</p>	Changes were made to s. 3 by decision of the BCU No.2 of 06.01.2023
44	No.153 dated 16.12.2022	On the publication of the Report of the Committee on Free Legal Aid at the UNBA website	The report of the FLA Committee, on certain issues of functioning of the FLA system in Ukraine at the official website of UNBA has been published	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
45	No.154 dated 16.12.2022	On sending the to relevant Ukrainian institutions	In order to protect the institutional interests of the Bar and to ensure the system of legal protection of human rights in Ukraine, which meets the standards of the state governed by the rule of law, to send a report of the UNBA FLA Committee to the CMU, Verkhovna Rada Committee on Legal Policy, Subcommittee on the Organization and Activities of the Bar, legal aid centers, the Verkhovna Rada Committee on Anti-Corruption Policy, the Verkhovna Rada Committee on Budget, the Verkhovna Rada Committee on Public Administration, local Self-Government, regional development and urban planning for consideration and taking measures within the powers to address the problematic issues of conceptual contradiction between the functioning of the FLA system and the Institution of the Bar in Ukraine	
46	No.155 dated 16.12.2022	Addressing the European Commissioner for Justice	The President of UNBA, BCU was instructed to send an appeal to the European Commissioner for Justice, adding a copy of the report of the UNBA FLA Committee, in order to take measures of response within the powers to protect the interests of the Bar of Ukraine from risks, which are created by Deputy Minister of Justice of Ukraine on European Integration Kolomiyets V. A copy of the address to be directed to the Council of Bars and Law Societies of Europe(CCBE)	
47	No.156 dated 16.12.2022	About addressing the Council of Bars and Law Societies of Europe (CCBE)	The President of UNBA, BCU was instructed to send an appeal to the Council of Bars and Law Societies of Europe (CCBE) on the issues of unacceptable interference of the Ministry of Justice with the Bar self-government	
48	No.157 dated 16.12.2022	On appeal to the National Agency for the Corruption Prevention on corruption risks in the system of Free Legal Aid	In order to protect the institutional interests of the Bar from the risks created by the FLA system, the President of UNBA, BCU was instructed to send an appeal to the NACP to take measures within the powers to eliminate real and potential corruption risks in the FLA system	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
49	No.158 dated 16.12.2022	On publication of articles on free legal aid	The Chair of the UNBA Committee on FLA, , and the BCU members of were instructed to cover (explain) the Report on current issues of the functioning of the FLA system in Ukraine by publishing articles at the official website of the UNBA	
50	No.159 dated 16.12.2022	On approval of the Clarification on certain aspects of the preservation of the professional legal privilege in the system of free legal aid	Clarification has been approved	
51	No.160 dated 16.12.2022	On initiating consideration of the issue of bringing to disciplinary liability the Deputy Minister of Justice of Ukraine on European integration, advocate Kolomiyets V.	It was decided to initiate the consideration of the issue of bringing to disciplinary liability of advocate Kolomiyets V. and send to the Committee for the Protection of Advocates' Rights and Professional Guarantees materials of the BCU meeting on issues related to the functioning of the FLA system, for their study and preparation of a complaint regarding the inappropriate behavior of advocate Kolomiyets V.to QDCB of Lviv Region. The Chair of the Committee for the Protection of Advocates' Rights and Professional Guarantees has been entrusted to sign and send a relevant complaint to the addressee	
52	No.161 dated 16.12.2022	On the appeal to the Prime Minister of Ukraine on the dismissal of Deputy Minister of Justice of Ukraine on European Integration Kolomiyets V.R.	In order to promote integrity, impartiality and effectiveness of the authorities, it was decided to appeal to the Prime Minister of Ukraine with a request to submit for consideration by the Cabinet of Ministers a motion on the dismissal of Deputy Minister of Justice of Ukraine for European Integration Kolomiyets V.R. in connection with the violation by the latter of the provisions of Articles 37, 38 of the Law of Ukraine "On Prevention of Corruption", which determine the need for public persons to comply with generally recognized ethical standards of conduct and courtesy in relations with citizens, supervisors, colleagues and subordinates. Assigned to the President of UNBA, BCU to sign the corresponding appeal	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
53	No.163 dated 16.12.2022	On appeal to the court against unlawful inaction of the Ministry of Justice of Ukraine	In order to protect the violated rights and legitimate interests of advocates from the risks created by the Ministry of Justice in the system of providing FLA, as well as to increase the independence of advocates in this system, it was decided to appeal to the court with the requirements to declare unlawful inactivity of the Ministry of Justice regarding the non-holding of competitions for the post of Director of the CC and the election of members of the Supervisory Board of the CC and oblige the Ministry of Justice to hold appropriate competitions	
54	No.167 dated 16.12.2022	On the transfer of applications for the assessment of quality, completeness, and timeliness of the provision of free legal aid by advocates, with a workplace in the City of Kyiv, for consideration to other regions	Due to the absence of the Commission for the Assessment of Quality, Completeness and Timeliness of the Provision of FLA by advocates in the City of Kyiv, it was decided to authorize the temporary acting director the Bar Council of Kyiv City, prior to formation of the Bar Council of Kyiv City in accordance with the requirements of the Law of Ukraine "On the Bar and Practice of Law" to direct the relevant requests to other regional Bar Councils , taking into account the proximity of the territorial location to the City of Kyiv, relating to the assessment of quality, completeness and timeliness of the provision of FLA by advocates, whose workplace is located in the City of Kyiv, for their consideration by the Commissions for Assessment of Quality, Completeness and Timeliness of the Provision of FLA by advocates, created at these other regional Bar Councils	
55	No.168 dated 16.12.2022	On Amendments to the Procedure for Professional Development of Advocates of Ukraine (new edition)	To amend the said Procedure approved by the decision of the BCU No.63 from 03.07.2021, as amended, supplementing the Procedure with a new paragraph 21-1 of the following content: "21-1. Advocates included in the FSLA Register of Advocates and/or have signed a contract for the provision of FSLA on a permanent or temporary basis receive every year not less than 2 points of FLA training." The Higher School of Advocacy is instructed to develop a specialized training course for advocates cooperating with the FLA system, as well as to organize free and paid activities on the provision of FLA	This decision was amended in 08.02.2024

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
56	No.181 dated 27.12.2022	Regarding some issues of professional development of advocates providing free legal aid	<p>S.1 of the decision of the BCU No.30 of 16.03.2022 is supplemented with the following: Advocates included in the FSLA Register, and/or have signed a contract for the provision of FSLA on a permanent or temporary basis, fulfill their duty to improve their qualification in the amount of 2 FSLA CLE points . In this part, the Procedure renews after 31.12.2022."</p> <p>The UNBA Higher School of Advocacy is entrusted to organize the work of inspectors monitoring the quality of the organization of the training process at the CC, RCs and LCs, as well as to carry out constant monitoring of training activities carried out within the FLA system , their compliance with the Law of Ukraine "On the Bar and Practice of Law" and the constitutional principles of the institutional independence of Bar.</p> <p>The UNBA Expert Council on Accreditation and Certification of the Professional Development of Advocates has been entrusted to strengthen the control over the subject/content of training activities organized by the CC, RCs and LCs; to prevent the accreditation of the activities held by these operators, which are organized on the premises contrary to those of the decisions of the BCU regarding the quality standards of the FSLA provision and violate the principle of institutional independence of the legal profession in the legal state governed by the rule of law</p>	
57	No.182 dated 27.12.2022	On the withdrawal of Ukrainian National Bar Association from the Memorandum of Cooperation with the Coordination Center for Legal Aid Provision	It was decided to withdraw from the said Memorandum of Cooperation dated 07.03.2019	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
58	No.183 dated 27.12.2022	On approval of Clarifications on the participation of advocates in criminal proceedings in the absence of a suspect, accused	The Clarification on participation of advocates in criminal proceedings in the absence of the suspect, accused has been approved	
59	No.2 dated 06.01.2023	On Amendments to paragraph 3 of the decision of the Bar Council of Ukraine No.124 of 04.11.2022	Changes were made to s. 3 BCU decision No.124 of 04.11.2022 in the following wording: "3. Establish a term ending after 05.02.2023 for the initial submission to the regional Bar Council at the workplace of the advocate, or the BCU, or through the personal web cabinet of the advocate of the notification of the inclusion of an advocate in the FSLA Register and/or the conclusion of a contract for the provision of FSLA on a permanent or temporary basis	
60	No.25 dated 11.04.2023	On the assessment of the quality of assistance provided by advocates of the free legal aid system	<p>It is clarified that compliance with the quality standards for the FSLA provision, approved by the relevant orders of the Ministry of Justice, is the duty of an advocate, which is fulfilled in view of the interests of the client and the implementation of Art. 8 Rules of Professional Conduct, which supersede bureaucratic procedures that exist in the provision of FSLA.</p> <p>A working group was created to improve the Regulation on the Commission for Assessment of Quality, Completeness and Timeliness of the FLA provision by advocates, approved by the decision of the BCU from 15.12.2017 No.281, and to instruct the President of UNBA, BCU to determine its personal composition. The President of UNBA, BCU is instructed to appeal to the CMU with a proposal to amend the CMU Resolutions on the functioning of the FLA system by excluding from the powers RCs and LCs the assessment of legal aid quality, and improvement of qualification of its providers.</p> <p>The Chair of the UNBA Committee on FLA, was designated responsible for submitting such an appeal to the CMU and presenting the position of the BCU on amendments to certain acts of the CMU that regulate the FLA system. The UNBA Committee on FLA, jointly with the UNBA Higher School of Advocacy, has been entrusted to develop educational courses (seminars) for the members of the Commissions on Assessment of Quality, Completeness and Timeliness of the FLA provision by the advocates on the functioning of the FLA system, defining as mandatory familiarization with such seminars by the members of these Commissions</p>	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
61	No.46 dated 20.05.2023	On the continuation of the work of the working group on improving the Regulation on the Commission for the Assessment of Quality, Completeness and Timeliness of the Provision of Free Legal Aid by advocates	The work of the Working Group on improvement of the Regulation on the Commission for Assessment of the Quality, Completeness and Timeliness of the FLA provision by advocates has been extended	
62	No.47 dated 20.05.2023	On amendments to the Procedure for improving the qualification of advocates of Ukraine	It was decided to amend the Procedure for professional development of advocates of Ukraine approved by the decision of the BCU No.63 of 03.07.2021, as amended, by excluding s.13 thereof	
63	No.48 dated 20.05.2023	On appeal to the Ministry of Justice of Ukraine on taking measures to respond to the protection of the rights of advocates providing free secondary legal aid	It was decided to entrust the Committee on FLA, which operates within the UNBA, to prepare a summary information on violations of the rights of advocates providing FSLA in criminal cases in which special pre-trial investigation and special trial are carried out, and send it to the Secretariat of UNBA, BCU to prepare further appeal to the Ministry of Justice on taking measures of response to the protection of the rights of advocates providing FSLA	
64	No.53 dated 20.05.2023	On the appeal to the Prime Minister of Ukraine regarding the initiation of disciplinary proceedings against Deputy Minister of Justice of Ukraine for European Integration Valeriya Kolomiyets	Taken into consideration the information on the state of the CMU's response to the actions of Deputy Minister of Justice of Ukraine on European Integration Kolomiyets V. The draft appeal to the Prime Minister of Ukraine regarding the disciplinary proceedings against Deputy Minister of Justice of Ukraine on European Integration Kolomiyets V. has been approved . The President of UNBA, BCU is instructed to sign and send an appeal to the Prime Minister of Ukraine approved by this decision	
65	No.74 dated 20.05.2023	About the appeal to the Ministry of Justice and the CC on involving their representatives in the Working Group on improvement of the Regulation on the Commission for the Assessment of Quality, Completeness and Timeliness of the FLA Provision by the advocates	It was decided to appeal to the Ministry of Justice and the CC to delegate their representatives in the working group on improving the said Regulation	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
66	No.92 of 11-12.08.2023	On the provision of proposals and comments to the draft Resolution of the Cabinet of Ministers of Ukraine “On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine on Access to Free Legal Aid”	The President of UNBA, BCU was instructed to send to the Ministry of Justice proposals and comments to the draft resolution of the CMU “On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine on Access to free legal aid”	
67	No.105 dated 23.10.2023	On amendments to the Procedure for granting FPLA by entities created or engaged under contracts by local self-government	Assigned to the President of UNBA, BCU to apply to the CMU with the initiative to amend s. 11 of the “Procedure for providing free primary legal aid by entities established or engaged under contracts by local self-government”, approved by the Resolution of the Cabinet of Ministers of Ukraine No.1088 of 13.10.2023, excluding the provision, which provides, that the mechanism for monitoring the activities of the legal aid provider can be determined by local self-government	
68	No.121 of 15-16.12.2023	On the implementation of a pilot project on the interaction of Bar self-government, local self-government, bodies (institutions) authorized by the state to provide FLA in the organization of local self-government FPLA provision	It was decided to agree with the proposal of the UNBA Committee on FLA on the implementation of the said pilot project in 2024. The procedure for implementation of the mentioned pilot project has been approved. The UNBA Committee on FLA, the Secretariat of UNBA, and the BCU are instructed to prepare draft memoranda with the bodies and institutions involved in the pilot project, as well as to take other measures to the extent necessary for the implementation of the pilot project	
69	No.125 of 15-16.12.2023	On granting the order of the UNBA Committee on FLA to develop proposals for amending the Law of Ukraine “On Free Legal Aid”	The UNBA FLA Committee has been instructed to develop proposals to the Law of Ukraine “On FLA” in the part of extending the list of subjects of the right to FSLA, for which to attract stakeholders, including international organizations. It was decided to send the developments of the UNBA Committee on FLA to the CMU and the Committee on Legal Policy of Verkhovna Rada for their consideration in the prescribed manner and adoption of amendments to the Law of Ukraine “On FLA”	

No.	Number and date of the BCU decision adoption	Name of the BCU decision	The main content of the BCU decision	Notes
70	No.132 of 15-16.12.2023	On the continuation of the work of the working group on improving the Regulation on the Commission for the Assessment of Quality, Completeness and Timeliness of the FLA provision by advocates	The UNBA FLA Committee has been instructed to prepare proposals for the preparation of claims for contesting normative legal acts that do not comply with the legislation of Ukraine on FLA, the Constitution of Ukraine, as well as the Law of Ukraine “On the Bar and Practice of Law” in terms of violation of professional legal privilege; The work of the Working Group has been continued and it was obligated to provide the agreed and consolidated draft of the Regulation	
71	No.133 of 15-16.12.2023	On the consideration of problematic issues in the FLA system	The UNBA FLA Committee was instructed to prepare amendments to the Law of Ukraine “On Free Legal Aid,” which would allow the termination of the Center’s order to provide FLA in discontinued proceedings. It was decided to apply to the Ministry of Justice to involve UNBA in the work group of the Ministry of Justice on the development of changes to the methodology for calculating the amount of remuneration for advocates providing FSLA. It was decided to appeal to the Ministry of Justice and the CC on the settlement of debts to advocates providing FSLA as of 2023	

The analysis of the above-mentioned decisions of the BCU indicates that for ten years UNBA has actively contributed to the State - Ministry of Justice and the CC in the organization of the provision of the FLA. In 2013, a Memorandum of Cooperation on the provision of FLA was signed with the Ministry of Justice, which is valid until this time.

In particular, measures were taken to assist advocates in their participation in competitive selection; Bar Councils of regions ensured participation of advocates in the relevant competition commissions; recommendations were developed and approved for this; standards of provision of FSLA in various categories of cases were developed and approved.

At the same time, the concern about the compliance of the Ministry of Justice with the terms of the signed Memorandum has been reflected in the decisions of the BCU since 2014. In order to assess the implementation of the Memorandum obligations, the relevant working group, commission, etc. were created.

Already in 2015, the BCU approved the first report “System of free legal aid in Ukraine: current problems and recommendations for its reform”

The report contained a reasonable statement that neither the current version of the Law of Ukraine “On Free Legal Aid” at that time, nor the system of the FLA envisaged thereby were consistent with the Constitution and international obligations of Ukraine. The practice of providing FLA in Ukraine does adhere to the principle of free choice of defender and creates discrimination against individuals on material and property grounds.

It was stated that the current system has led to corruption and abuse, including delays in the provision of an FLA advocate, forced provision of FLA and selective distribution of cases by state officials. It was emphasized that the Law of Ukraine "On the Bar and Practice of Law" and international standards call for the legal practice to be an independent professional activity, independent from the state. However, the FLA system in Ukraine has been created by the state for an opportunity to have a dominant role in criminal proceedings by appointing a prosecutor and an advocate alike. The principle of professional legal privilege is violated through the access of public officials to the case materials; there are problems in the remuneration of the state-appointed FLA advocates; the case distribution by state officials and excessive administrative and reporting requirements for advocates. There are also issues related to timely payments to advocates for their work, which are significantly smaller than the bureaucratic and operating costs of managing the system. The freedom of legal practice is also undermined by the creation of additional non-transparent testing and selection of procedures for advocates willing to join FLA system, not taking into account the fact that the testing and licensing of advocates has already been conducted by the Bar, which assigned this function by law. The current system also contributed to the rift in the professional legal community as there are now advocates providing FLA and those who do not. In addition, it was found that the state has the opportunity to influence a significant number of advocates through the FLA system who may later elect representatives to the Congress of Advocates of Ukraine, who for their part elected representatives to the High Council of Justice, the Higher Qualification and Disciplinary Commission of Judges of Ukraine and the Qualification Commission of Prosecutors. Thus, the state has received an improper and dominant influence not only on the Bar, but also on these institutions, which are extremely important for the existence of the rule of law and the independence of the judiciary in Ukraine.

The main problems were defined as follows:

- § violation of human rights (violation of freedom to freely choose a defender, discrimination on property and other grounds, etc.);
- § violation of the professional rights of advocates (low wages, non-transparent procedure for the distribution of orders, excessive reporting, etc.);
- § pressure of the state on the Bar and threats to the independence of advocacy (non-transparent competitions for the selection of advocates, toxic discrimination of advocates providing FLA, from other advocates, etc.);
- § insufficient and non-transparent use of funds (excessive administrative costs and excessively low pay for advocates' work).

Taking into account such an unsatisfactory situation with the FLA system in Ukraine, the urgent need arose for its reform by transferring the management of the FLA system from the state to an independent body, with the wide involvement of the Bar as an independent constitutional institution, thereby eliminating the possibility for pressure and interference from the state with the professional activities of advocates.

In 2016, the first conclusion was approved on the violation of rights and guarantees legal practice, corruption component in the creation and functioning of the FLA system in Ukraine.

Since 2016, UNBA has repeatedly appealed to various entities to carry out decisions of the BCU and outside them to take measures to stop violations of the rights of advocates and guarantees of legal practice. And as for the improper remuneration of advocates providing FLA, since 2013, and on this occasion almost every year decisions were made that contained a negative assessment of the state of observance of the rights of advocates to decent and timely payment of their labor.

Similarly, UNBA has repeatedly appealed to various entities within their powers regarding the misuse of budget funds by the bodies of the FLA system.

UNBA also sent numerous proposals for improving the legislation in the field of FLA.

In fact, not a single decision of the BCU adopted over the past ten years has lost its relevance, and the conclusions on the system of FLA in Ukraine have become particularly actual and urgent.

The conclusions of the UNBA on the urgent need to reform the system of the FLA in Ukraine, for example, by creating a public legal entity by the state, which will be managed by a collective body consisting of advocates, representatives of Ukrainian Parliament Commissioner for Human Rights, the Ministry of Finance of Ukraine, were proved and substantiated back in 2016.

It should be noted that **over the past ten years, UNBA has developed reasonable solutions on all key issues of the functioning of such a system both in the partnership mode and in the protest mode against destructive changes in the FLA system. At present, only the choice of ways of their implementation, including the most economically, socially and legally justified position on the reform of the FLA system, with its transfer to the management of a newly created independent entity with sufficient collective competencies to return the FLA system to a constructive direction of development according to the standards of a legal, democratic, social state, seems relevant.**

2.2. Violation of the rights of advocates providing FLA, and the activities of UNBA, BCU in the field of protection of such rights

According to the results of the substantive monitoring of the functioning of the FLA system, it was found that typical violations of the rights of advocates providing FSLA are:

- 1) delaying payment for the work performed by advocates on the provision of FLA;
- 2) groundless failure to conclude contracts on provision of FSLA with advocates;
- 3) interference with the legal position of an advocate by imposing standards, algorithms, forms developed by the FLA system etc.;
- 4) interference with the professional activity of an advocate in the way of inducing unjustified disclosure of privileged information (for example, when considering complaints against an advocate and when submitting reports);
- 5) violation of the independence of legal practice by way of inducing the execution of an unknown form of documents that are not inherent in the legal profession (for example, reporting notes);
- 6) violation of the independence of an advocate and the Bar by means of assessment of quality, timeliness, and completeness of the provision of FSLA by advocates conducted by employees of the FLA centers, and not by commissions established by the regional Bar Councils etc.

It should be noted that the advocates feel uncomfortable taking measures to defend protect their professional rights in providing FLA.

This is due to the fact that any attempts to disagree with the practices of FLA center employees, their interpretation of the legislation on the Bar and/or their understanding of the Rules of Professional Conduct, as a rule, lead to the start of personal confrontation, in which the advocate ends up being vulnerable.

The key postulate of the organization of interaction of FLA centers with advocates is: "The system offers cooperation solely on the predetermined principles, the only way to change them is to abandon the cooperation altogether." This rule is brought to the attention of advocates quite clearly and directly: work on the system's terms or leave.

Such a concept of interaction coupled with the absolute subjectivism in decision-making regarding the conclusion of contracts with advocates for each year, advocates are, by definition, dependent on the employees of the FLA centers, who are endowed with broad powers over them, the implementation thereof may lead to the onset of highly undesirable consequences for advocates. At the same time, advocates do not have any check or balances. In fact, there are only two options for advocates to interact with the FLA system: either as demanded by the FLA center employees or leave.

At the same time, advocates are interested in such cooperation, as in war times it is often the only lifeline.

Under such conditions, it is natural that advocates are at least demotivated from actively defending client's rights in the provision of FLA. Presumably, it is this outcome that is the goal of the ideological basis for the non-alternative model of interaction between the system and advocates.

In any case, advocates, reporting cases of violation of their rights in the FLA system mostly want to hide this fact from the FLA center employees. A significant part of cases of violation of the rights of advocates in the FLA system is generally unreported by advocates.

This is the main reason for the inability to form an objective statistic of violations of the described professional rights of advocates, to use it to increase the credibility of the positions of the UNBA in protecting the rights of advocates.

It should be noted separately that in cases where the rights are violated by any other entities, as a rule, advocates know and independently apply the mechanisms available to them to protect their professional rights. At the same time, appeals to the UNBA are of an auxiliary nature and/or aimed at achieving general goals in the interests of the entire institution of the Bar.

In the case of violation of the rights of advocates in the system of providing FLA, knowing about the mechanisms of their protection, advocates for the most part do not apply them, because they do not want to stop cooperation with the FLA centers. At the same time, applying to the UNBA is almost the only way for advocates to achieve the protection and/or restoration of their violated rights.

In this regard, it is necessary to note the facts of appeals of advocates cooperating with the FLA system to the following bodies and entities of UNBA:

- § to regional bodies of Bar self-government (regional Bar Councils, regional Committees on Protection of Advocates' Rights and Professional Guarantees;
- § to the central bodies of Bar self-government (Bar Council of Ukraine, UNBA Committee on Protection of Advocates' Rights and Professional Guarantees, UNBA Committee on FLA), etc.

All bodies of Bar self-government within their powers take adequate measures in response to such appeals (no case of improper response to the appeals of advocates has been identified).

This report lists all BCU decisions as of 01.01.2024, which are a source of information for advocates on measures already taken to respond to violations of the rights of advocates in the FLA system and can be used by them to independently protect violated professional rights. In addition, the dozens of decisions of the BCU described above convincingly indicate that every advocate seeking protection at the highest permanent body of Bar self-government will be heard and, on the facts, set out in his appeal, all possible response measures will be applied.

The UNBA Committee on FLA as the main UNBA body takes measures to respond to the appeals of advocates on the day of their receipt. The Committee considers and provides appropriate responses, all appeals, including anonymous or classified ones.

The successful cases of the Committee for 2023 are:

- § achieving a positive outcome in protecting the rights of advocates regarding groundless failure to conclude agreements with them for the next budget year;
- § termination of violation of the rights of advocates in the form of premeditated avoidance of the legal regulation by stating that advocates provided “free legal assistance,” and not “free legal aid;”
- § termination of systematic violations of the rights of advocates providing legal aid in criminal proceedings in which there is no suspect (accused);
- § influence accelerating the process of debt repayment to advocates that provided FSLA, etc.

It should be noted that the activity of advocates providing FLA in 2023 was the subject of special attention and the Higher Qualification and Disciplinary Commission of the Bar.

In its practice, the specified higher disciplinary body of the Bar proceeds from the fact that advocates involved in the provision of the FLA fully covered by the requirements of the Law of Ukraine "On the Bar and Practice of Law", the Rules of Professional Conduct and decisions of the BCU. At the same time, a special procedure for participation in the provision of the FLA determines additional duties of advocates, and therefore establishes certain additional requirements to comply with. Improper behavior associated with the FLA provision by an advocate may result in disciplinary liability.

A substantial number of disciplinary proceedings against advocates in connection with the provision of the FLA identified the need for the formation of the same general approaches by Disciplinary Chambers of the Qualification and Disciplinary Commissions of the Bar on the practical application of the law on the provision of FLA by advocates.

In view of this, 28.12.2023 the Higher Qualification and Disciplinary Commission of the Bar approved the generalization of the disciplinary practice on the provision of [FLA by advocates](#).

According to the results of the analysis of disciplinary practice, including application by the Qualification and Disciplinary Commissions of the Bar of laws during the consideration of cases related to the provision of FLA by advocates, a number of important conclusions were made:

- 1) the advocate must take all possible measures to harmonize [the position with the client](#);
- 2) the advocate has the right to refuse to execute the FLA order in the cases provided for by the Rules of Professional Conduct. At the same time, the refusal should [not violate the course of the trial](#);
- 3) the advocate should inform the client about the appeal to the RC with a [statement on termination of the order](#);
- 4) failure to comply with the client's instruction due to the lack of legal grounds for its implementation is not a violation of the [Rules of Professional Conduct](#);
- 5) the absence of grounds for the execution of the order, certified by the legal opinion of the advocate and the deed of providing free [secondary legal aid](#), excludes disciplinary violation;
- 6) the presence of an advocate under the contract does not exclude the possibility of participation of an FLA advocate, in case of the standing order of the [FLA center for the provision of free legal aid](#);
- 7) refusal to comply with the requirements of the court, which contradict the legislation, [can not be a disciplinary offense](#);
- 8) when assessing the performance of duties by an advocate, the disciplinary chamber may take into account the conclusion of the Commission for the Assessment of Quality, [Completeness and Timeliness of the FLA provision by advocates \(if any\)](#);
- 9) the absence of the conclusion of the Commission for the assessment of quality, completeness, and timeliness of [the provision of free legal aid](#) by advocates does not indicate the absence of disciplinary misconduct;
- 10) the presence of orders for the provision of free secondary legal aid is not an indisputable basis for suspending the QDCB decision, which suspended the [right of an advocate to practice law for a certain period](#).

The above-mentioned conclusions are not only benchmarks in resolving such cases by the QDCBs, but also an auxiliary material for advocates, which allows avoiding violations in the provision of FLA, and, most importantly, serve as an informative source in justifying their own position in the defense against violations of their professional rights.

In general, it should be noted that in all cases of groundless attempts to exert pressure on advocates providing FLA through disciplinary procedures, the QDCBs stood up for advocates.

Regional bodies of Bar self-government also take an active position on this issue, but in most cases, official information on this issue is absent due to the use of individual measures of influence on violators of advocates' rights.

An honorable mention goes to involvement of the Higher School of Advocacy in the work on identifying problematic issues in the provision of FLA in 2023.

In particular, in August 2018, a survey on problematic issues in the field of provision of [FLA was launched](#), and its results [were published in September 2023](#).

In particular, it was found that

19% of the surveyed

advocates are registered in the FLA Register, but do not carry out any practical activities. This confirms to some extent the previously formed conclusions on the inflated number of advocates in the FLA Register, administered by the CC.

The advocates identified the most problematic aspects of the functioning of the FLA system:

30,1%

payment for the services of an advocate providing FLA;

17,9%

the risk of discrimination against advocates providing FLA

9,8%

non-observance of the rights of advocates and guarantees of legal practice by the FLA Centers;

8,9%

substitution of an advocate provided by the FLA;

8,9%

quality assessment of FLA;

8,1%

the use of an advocate providing FLA to eliminate an advocate under contract;

7,3%

the independence of the FLA system;

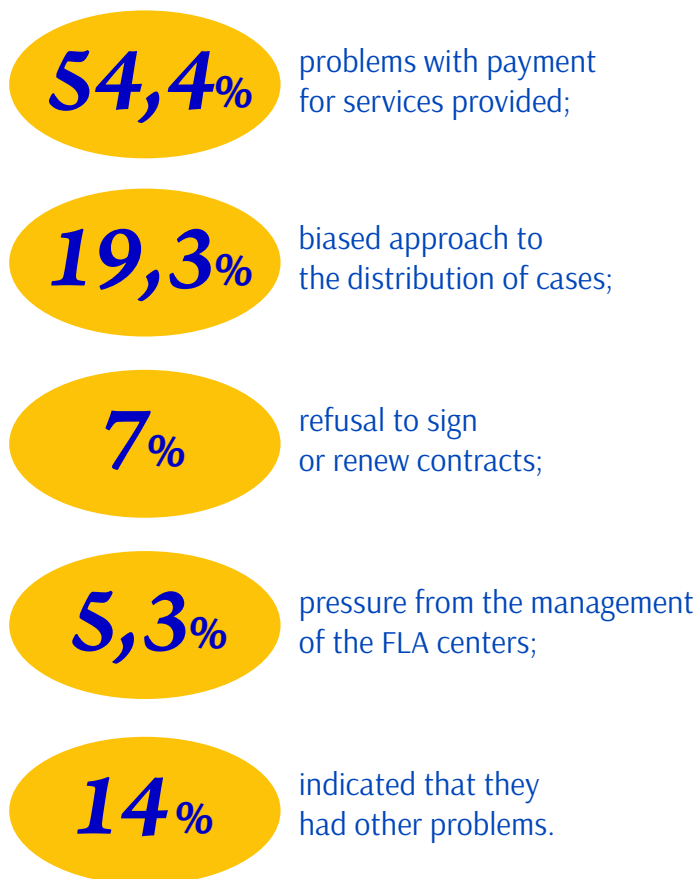
4,9%

non-compliance with the principle of independence of the advocate in the provision of FLA;

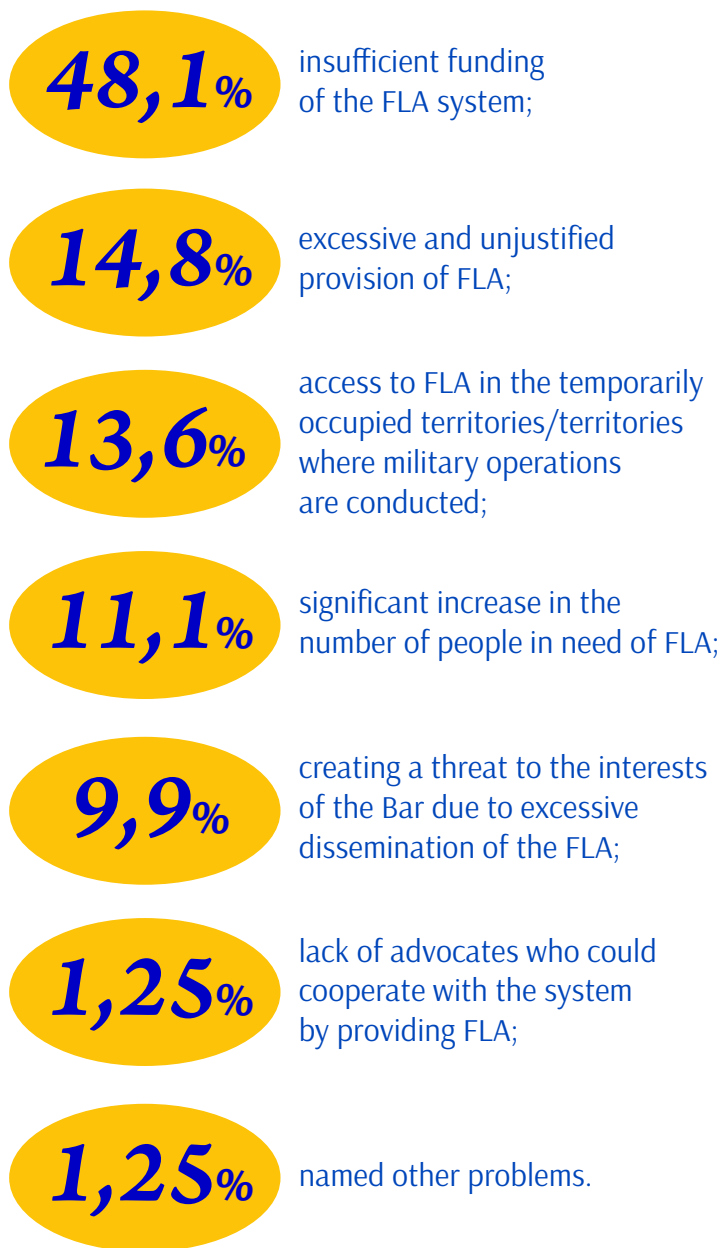
4,1%

the failure to provide an advocate with early access to the subjects entitled to FLA ("Salduz principle").

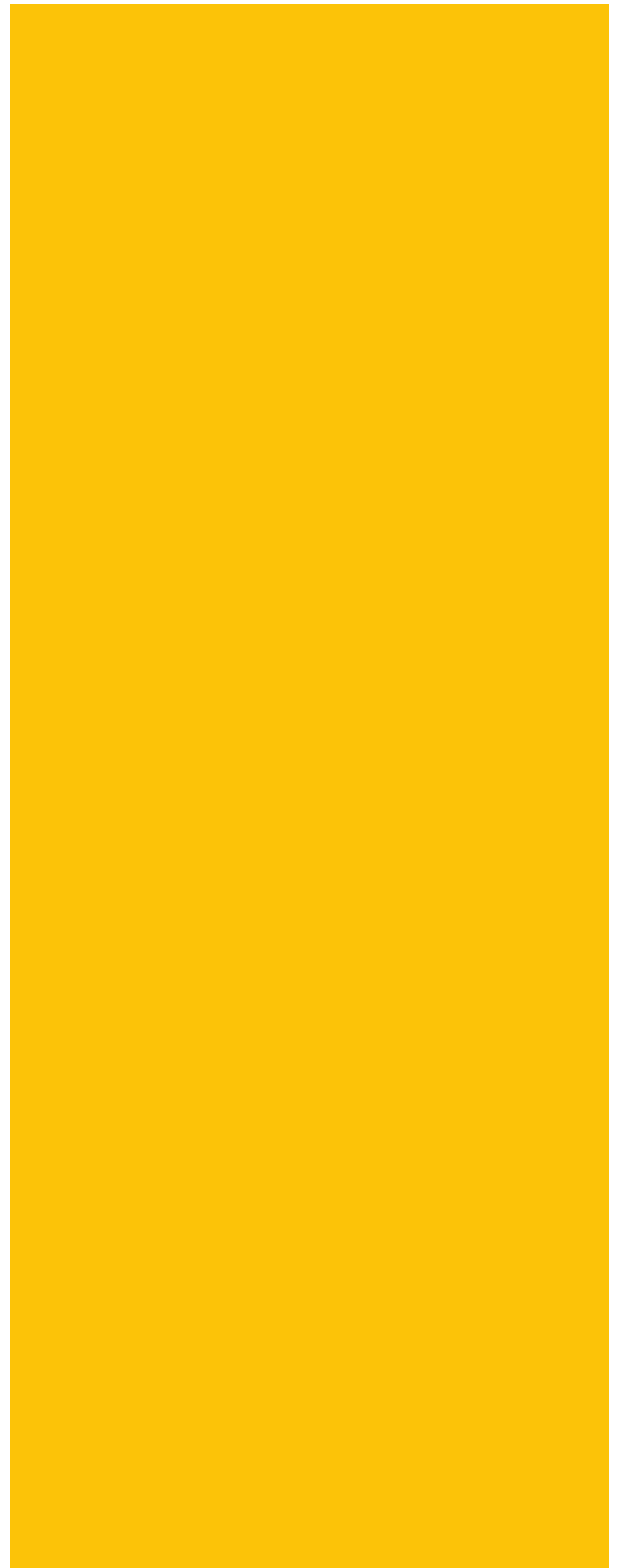
The results of the survey on the most frequent violations of the rights of advocates and guarantees of legal practice by the FLA centers are the following:



When asked about the most pressing problems in the provision of FLA in the conditions of martial law, the advocates answered as follows:



Since the issue of remuneration is key for advocates, the answers of advocates to the questions regarding the problematic components of this issue are informative:



The results of such a survey allow to more objectively identify the priorities of professional concerns of advocates providing FLA, and more effectively identify measures to protect their rights.

Trends in the violation of the rights of advocates providing FLA and their protection indicate that although UNBA is taking many measures to overcome the causes and consequences of such a threatening situation for advocates and advocates with respect to the rights of advocates in the system of providing FLA, their locality and/or reactivity does not give the desired result.

If the current system of providing FLA in Ukraine continues unchanged, which, according to its basic characteristics, determines the basis for the existence of a favorable environment for violation of the rights of advocates, the conceptual overcoming of the outlined problems is impossible or is significantly complicated.

An effective way to protect the rights of advocates in the system of provision of the FLA is to implement the groundbreaking changes in such a system, aimed at meaningful changes in its management system from state-run to an independent or a combined one, in which the state will not have a decisive influence on advocates.

CHAPTER III

SOME PROBLEMATIC ISSUES OF THE FUNCTIONING OF THE FLA SYSTEM IN 2023

3.1. Quality monitoring of FLA

The quality provision of the FLA, which is guaranteed by the state, is undoubtedly connected with the guarantee of unconditional observance by all state bodies of the principle of the independence of the Bar. These guarantees are interrelated.

Currently, relations between the relevant state bodies and UNBA do not meet these requirements due to the neglect by the CMU, the Ministry of Justice, the CC of the need for cooperation with the legal community.

Systemic violations of the current legislation were committed in order to establish control over the activities of advocates, to gain illegal influence on advocates working in the FLA system. The continuation of such trends negatively affects the quality of the provision of FLA through the withdrawal of advocates who do not agree to the violation of their rights and guarantees of advocacy.

In recent years, the Ministry of Justice has repeatedly made attempts to introduce amendments to the Law of Ukraine "On Free Legal Aid" to Verkhovna Rada of Ukraine in order to introduce the specified monitoring of the assessment of the quality of advocates' legal activity, which contradicts Art. 25 of the Law "On the Bar and Practice of Law". Completely different proposals were made, including the approval by the same Ministry of Justice of selected groups of advocates-experts. Given the human factor and corruption risks, it is obvious that this would not guarantee the independence of advocates from the FLA system.

Therefore, a serious victory of UNBA in this direction is prevention of the introduction of state monitoring of the activities of advocates by amending the Law of Ukraine "On Free Legal Aid", despite the constant pressure from the Ministry of Justice of Ukraine.

Thus, the current Law of Ukraine "On Free Legal Aid" remains the legislative basis for the position of UNBA. Monitoring should remain solely the competence of the commissions established for this purpose by the Bar Councils of the regions.

Taking into account the MoJ's instruments adopted with gross violations of the laws of Ukraine "On the Bar and Practice of Law" and "On Free Legal Aid", the Constitution of Ukraine, delegate legislative acts, which contradict also international recommendations, **it seems to be a clear the need exists to improve the Regulation on the Commission for the Assessment of Quality, Completeness and Timeliness of FLA provided by advocates, which are permanent collegial bodies, formed by the regional Bar Councils.**

According to Art. 5 of the Law of Ukraine "On Free Legal Aid", the state policy in the field of providing FLA is based on the principles of the rule of law; legality, quality assurance of free legal aid.

Under the provisions of Art. 6 the issue of granting FLA in Ukraine is regulated by the [Constitution of Ukraine](#), [this Law](#), [other laws of Ukraine](#), [international treaties of Ukraine](#). According to Articles 6-1, 15 of the Law of Ukraine “On Free Legal Aid”, the FLA provision system includes entities providing FSLA (advocates included in the FSLA Register of Advocates).

Article 17 of the Law of Ukraine “On Free Legal Aid” provides an exclusive list of the powers of the FLA centers, among which there are no powers to monitor the assessment of quality, completeness and timeliness of legal aid [provided by advocates](#).

The granting of such powers to state bodies in the above-mentioned Law would be contrary to the provisions of Art. 131-1 of the Constitution of Ukraine, which guarantees the independence of the Bar, and [the legal practice regulated by the relevant law](#).

In addition, s.2 Art. 25 the Law of Ukraine “On Free Legal Aid” guarantees the observance of all rights and guarantees established by [the Law of Ukraine “On the Bar and Practice of Law”](#), and [Art. 25 of this Law, which defines the procedure for assessing the quality of legal practice, is no exception to this rule](#).

Finally, the rule is formulated in s. 2 Art. 25 of the Law "On the Bar and Practice of Law" in the context of specific circumstances, is unequivocal: assessment of the quality, completeness and timeliness of the provision of free primary legal aid by advocates is carried out upon request of local self-government bodies, and free secondary legal aid – upon request of the body (institution) authorized by law to provide free legal aid, or commissions formed for this purpose by the regional Bar Councils .

From this, it is clearly seen that all issues of relations between state bodies and advocates in terms of the procedure and conditions for monitoring the assessment of quality, completeness, and timeliness of the provision of FLA by advocates should be resolved exclusively in the manner determined by Art. 25 of the Law "On the Bar and Practice of Law".

In Ukraine, there is a hierarchy of legal acts. The Constitution of Ukraine has the highest legal force, laws are adopted on the basis of the Constitution of Ukraine and have a higher legal force than all other regulatory legal acts, including CMU resolutions, orders of ministries, and normative legal acts of all other state bodies that must be adopted on the basis and in compliance with the Constitution of Ukraine and the laws.

Despite the unambiguous provisions of the Constitution and the laws of Ukraine on the issue of ensuring the independence of the Bar and determining the procedure for monitoring the assessment of quality, completeness and timeliness of the provision by advocates of the FLA, the Ministry of Justice bypassing the UNBA and in order to ensure the illegal influence of the state on the Bar, nevertheless implement such monitoring through bylaws, which is unacceptable.

Thus, the Resolution of the Cabinet of Ministers of Ukraine dated 06.06.2012 No.504 approved the Regulation on the Coordination Center for Legal Aid Provision, which initially did not provide for quality monitoring of legal aid provided by advocates. Thru Resolution of the Cabinet of Ministers of Ukraine No.110 from 11.03.2015 that amended CMU Resolution No.504 of 06.06.2012, the CC was first allowed to conduct such monitoring.

According to the Resolution of the Cabinet of Ministers of Ukraine No.990 of 02.09.2022, the powers of the CC are expanded by the obligation to monitor the quality of mediation services, including those provided by advocates, who should be favored before mediators.

The adoption by the CMU of illegal amendments to the Regulation on the CC unilaterally without consulting UNBA, which directly affect the legal practice and the FLA provision, has led to further destructive changes, illegal expansion of the rights of the centers, strengthening unauthorized influence on advocates working in the FLA system, etc.

Since 2019, the structure of the CC, RCs and LCs provides for the establishment of departments for quality assurance of legal aid and training of advocates, despite the fact that the assessment of the quality of legal aid provided by an advocate and professional development thereof is the exclusive competence of the Bar self-government bodies.

The order of the CC of 06.04.2015 No.36 approved with an Annex No.1 carrying the form of monitoring compliance by advocates with quality standards of provision of FLA in criminal proceedings during the trial at the first instance courts. The monitoring is conducted by the incumbent or acting Head of the Department by way of observing the work of an advocate. Another form of control is a self-assessment questionnaire of an advocate, which is obviously humiliating.

According to the results of the monitoring, the assessor scores points for the presence of deep theoretical knowledge and a broad legal outlook, the application by the advocate of an effective strategy and tactics of defense, the timeliness of the preparation of all documents necessary for the effective performance of the duties of the FLA advocate, communication with the client, taking into account the circumstances of the case in general, etc. This means that the assessor familiarizes with the privileged documents of the advocate's dossier.

Thus, the assessment of the quality of work of advocates is carried out by a person whose professional background and knowledge depends solely upon the performance of duties in this position, which is unacceptable.

According to s. 3 Art. 22 of the Law of Ukraine “On the Bar and Practice of Law”, the advocate is obliged to ensure conditions that make it impossible for outsiders to access or disclose privileged information, while Art. 32 of the Law provides for imposing a disciplinary penalty on an advocate in the form of disbarment in case of disclosure by an advocate of information covered by professional privilege.

Such legal norms should be immediately recognized as illegal and abolished.

Since 2019, by amending CMU Resolution No.8 of 11.01.2012 “On approval of the procedure and conditions for concluding contracts with advocates providing free secondary legal aid”, a number of illegal mandatory conditions for concluding contracts have been approved, in violation of the rights and guarantees of legal practice, including the mandatory participation of advocates in the training of advocates organized by the CC, RCs or LCs and the absence of substantiated complaints against the actions of the advocate received by the FLA center and considered in accordance with the competence during the preceding year. although the centers are not endowed with such competence.

The introduction of the quality monitoring of the legal practice of an advocate not provided for by the current legislation amounts to violation of the constitutional rights of advocates, contrary to international provisions, adversely affecting the authority of the Bar in society and the world. Such monitoring should be prohibited.

Thus, an important task of UNBA is to initiate the necessary proposals with the preparation of relevant draft documents aimed at removing the provisions on quality monitoring advocates from by-laws governing the provision of FLA. With the achievement of this goal, it will be impossible for the State to exert influence on the position of advocates in cases through instructions and threats of unilaterally terminating the FLA provision contract.

An additional effect of a positive resolution to this issue will be saving the State Budget monies on the maintenance of illegally established departments within the structures of the CC, RCs, and LCs, which are obliged to monitor the quality of free legal aid to rendered by advocates.

Such a trend should be eliminated, the illegal regulations on monitoring the quality of advocates' FLA practice – cancelled, the requirements of international legislation on cooperation of competent state bodies and UNBA – fulfilled. All this will greatly contribute to eliminating corruption risks, improving the quality of advocates work in the FLA system, saving public funds for being wasted on the maintenance of unlawful structural units of the at the CC, RCs and LCs and ensuring the observance of the rights and guarantees of legal practice.

Solution for these issues is the following:

- 1) reducing powers of the FLA system in relation to quality monitoring of FLA provision by advocates with the direct legislative prohibition of such activity;
- 2) expanding the powers of the Commissions for Assessment of the Quality, Completeness, and Timeliness of the FLA provision and strengthening control over the exercise of such powers.

3.2. Distribution and execution of FSLA provision orders

The amount of payment for the work of an advocate providing FSLA is determined in accordance with the Methodology for Calculating the Remuneration of advocates providing free secondary legal aid, approved by the [CMU Resolution of 17.09.2014 No.495, as amended](#).

In particular, the amount of payment depends on the severity of the crime, the number of accomplices, the number of crime episodes, as well as other indicators.

Thus, for the defense of a person, suspected (accused) of committing a criminal offense under s. 3 Art. 187 of the Criminal Code of Ukraine, the payment is much higher than the payment for the defense of a person suspected (accused) of committing a criminal offense under s. 1 Art. 185 of the Criminal Code of Ukraine, while the defender has to undertake the same amount of work.

Which one of the defenders to receive an order for the case, is decided by the designated RC/LC employee, upon approval of the RC/LC leadership. Thus, the loyalty of advocate to the RC leadership directly affects the order this advocate receives.

Advocates file numerous complaints that they receive orders exclusively for cases of minor crimes, despite the fact that other advocates in the same region receive orders for grave and especially grave crimes (i.e., orders that are better paid).

Distribution of orders between advocates providing FSLA, since the launch of the system and to this time is conducted arbitrarily, "manually" and on the basis of subjective decisions of the RC/LC employees.

Such a distribution of cases creates corruption risks for advocates, since the latter become dependent on the RC/LC employees and are forced to explain themselves upon request of RC/, which is not provided by the legislation, because they understand that their loyalty to the RC/LC is the key to getting well-paid orders.

Distributing FLA orders to advocates manually, without automated means is the foundation, the basis of the illegal and groundless influence of the RC/LC on the advocate and his position in the case; this negates the independence of the advocate and creates breeding ground for the state's undue influence on the Bar as a whole.

On the execution of FSLA orders by advocates

Execution of FLA orders by advocate is actually carried out under the supervision of the RC/LC and the CC, that is, under the supervision of the State.

On the part of the State, the purpose of providing FSLA is not so much the organization of high-quality, complete, and timely legal aid as the absence of complaints from clients who are provided with FSLA.

The purpose is the key difference between the approach of the state and the freelance advocate, in fact, the duty of which is to provide legal assistance to the client in accordance with the Rules of Professional Conduct and the Law of Ukraine "On the Bar and Practice of Law".

Guided by its purpose, the RC/LC or the CC often require explanations from the advocate on a particular issue(s) unrelated to the payment of the advocate's work. The advocate is provided with advice, and in fact instructions on his legal position, "so that the client does not complain."

At the same time, the advocate, formally independent in the execution of the order, is forced to provide explanations, copies of documents covered by the privilege, and abide by the "advice" of the RC/LC employees. Otherwise, such advocate may be discriminated during the distribution of FLA orders.

In addition, *the injustice of the State's approach to such an advocate is also that the Law of Ukraine "On Free Legal Aid" does not provide an effective mechanism for scrutinizing the CC and RC/LCs by the Bar and does not provide opportunities for legitimate influence.*

Ways to solve the problem:

- 1) adopt amendments to legislative acts, which provide for the automated distribution of cases between the FSLA advocates (following the example of the automated system of document circulation of the court), the introduction of liability (including criminal) for unauthorized interference in the operation of the automated distribution system;
- 2) joint development and approval by the Bar self-government of the CC Anti-Corruption Program, which would provide a plan to reduce corruption risks in the FSLA system, indicating clear calendar deadlines for implementation;
- 3) creation and introduction of a mechanism for regular monitoring by the Bar of the functioning of the FSLA system both at the national and regional levels;
- 4) the inclusion in the CC Supervisory Board of at least 50 % of representatives of the Bar to be able to properly monitor the activities of the CC and legitimate interfere with the decision-making processes in the FSLA system, taking into account the position of the Bar.

3.3. Payment for the services of advocates providing FSLA

As already noted, legal regulation of payment of legal services is conducted on the basis of the Resolution of the Cabinet of Ministers of Ukraine "Issues of payment of services and reimbursement of expenses of advocates providing free secondary legal aid" dated September 17, 2014 No.465. It is constantly amended, the last time - on 07.11.2023.

The above resolution approved the procedure for payment of services and reimbursement of expenses of advocates providing free secondary legal aid, and the methodology of calculating the amount of remuneration of advocates providing free secondary legal aid.

In accordance with this Methodology, the availability of supporting documents is the prerequisite for advocate to receive reimbursement of costs associated with the provision of legal aid, i.e.:

- 1) use of public transportation;
- 2) car service fuel cost in case of using your own vehicle at night or in rural areas or in the absence of public transportation;
- 3) business trips outside the region (daily expenses, associated with the hotel stay);
- 4) postal costs;
- 5) purchase of medical masks, protective gloves in case of providing legal aid during quarantine or providing such assistance to persons carrying an infectious disease.

The list of expenses reimbursed to the advocate is exhaustive.

Reimbursement of expenses occurs only in the presence of supporting documents.

The documents confirming the use of public transport are the relevant travel tickets and/or receipts (checks) for payment of the fare.

Documents confirming the use of own vehicle are copies of the registration certificate or document confirming the right to use the vehicle, driver's license, a copy of the receipt for the purchase of fuel and lubricants.

Documents confirming travel expenses, postal expenses, expenses for purchase of medical masks, protective gloves are financial documents (cash check, commodity check, debit check, settlement receipt, travel document, etc.).

The costs associated with the provision of such assistance shall be incurred on the basis of an order for the provision of FSLA and an act of providing FSLA. That is, reimbursement of expenses without submitting a deed for the completed stage of FLA is currently impossible.

The calculation of the amount of remuneration of advocates providing FSLA is determined by the appropriate Methodology.

The methodology provides for restrictions in the amount of remuneration of an advocate – the so-called max remuneration of an advocate for the provision of legal aid, which depend on the stage of the proceedings and its duration.

According to s. 2 of the Methodology states, that

5%

of the minimum subsistence (since 2018) set for the current budget year is the basis for calculating the amount of remuneration of an advocate for the provision of legal assistance, which established for able-bodied persons at the time of submission by an advocate of the deed.

The algorithms for calculating the amount of remuneration of an advocate varying depending on the stage of the proceedings.

For example, the mechanism for determining the amount of remuneration of an advocate for the provision of legal assistance to a person who, in accordance with the provisions of the criminal procedural law, is detained and/or imprisoned, is radically different from the algorithm for determining the amount of remuneration of an advocate for providing legal assistance to a suspect at the stage of pre-trial investigation, court hearing etc.

To facilitate the use of the Methodology, a calculator was developed by CC – a software in which the calculation is conducted.

Using the calculator allows you to visually identify the factors that affect the amount of remuneration, and to find out the extent of this impact.

Rules of payment for legal aid provided to a person who, in accordance with the provisions of criminal procedural law, is detained and/or imprisoned.

These rules are the most complex in comparison to algorithms determining the amount of remuneration of an advocate for the provision of legal aid other types of orders.

According to s. 3 of the Methodology, under this scheme the amount of remuneration of an advocate for the provision of legal aid is calculated for providing FSLA to:

- § a person to whom administrative detention and/or administrative arrest have been applied;
- § a person who, in accordance with the provisions of the criminal procedural law, is considered to be detained and/or imprisoned;
- § in case of involvement in an individual procedural action.

The main indicators for determining the amount of remuneration of an advocate for the provision of legal aid are the number of visits of an advocate for a meeting with a client- FLA recipient, participation in procedural actions and/or collecting evidence and the number of actions of an advocate towards the provision of legal aid.

The formula for determining the amount of remuneration of an advocate for the provision of legal aid is peculiar, often lacking a linear dependence of the amount of remuneration to the number of procedural activities carried out by the advocate.

The number of visits of an advocate for a meeting with an FLA recipient, participation in procedural actions and/or gathering evidence.

The Methodology does not provide for this, but there is a practice that between the visits there should be a time interval of at least three hours.

However, the number of visits of the advocate is not limited to the calculation, each new visit increases the amount of remuneration.

Each visit of the advocate connected with:

- § conduct of procedural action,
- § meeting the client,
- § gathering evidence.

The preparation of procedural documents is not taken into account separately as a 'visit'. For example, if an advocate makes an appeal against the decision of an investigating judge, this is taken into account as a procedural action, but is not taken into account as a visit.

Therefore, the increase in the amount of remuneration of an advocate in any case is tied the number of visits to provide legal aid.

The number of actions of the advocate undertook to provide legal aid.

The number of procedural actions of an advocate affects the size of the so-called ratio of the number of actions undertaken by an advocate to provide legal aid.

In contrast to the number of visits, the ratio of the number of actions does not correspond to their mathematical quantity, but determined in accordance with the table, from which it follows that in the case of an advocate committing more than 10 procedural actions, the amount of remuneration does not increase.

The procedural actions of the advocate also include a meeting with the client. Before each procedural or investigative action, the advocate has the right to conduct and take into account a meeting with the detained person without additional documentary evidence.

If the client meeting date does not take place before (after) the procedural action, its conduct must be documented.

Such a confirmation document may be a statement requesting the client meeting submitted to detention facility with a note that the meeting actually took place.

The special time coefficient for legal aid

The coefficient of special time for legal aid is counted as a percentage.

The specified coefficient increases only to the limit of

50% of procedural actions

during the non-working hours. Most of the actions at night, weekends, holidays, and non-working days will not give a financial effect.

The worst time for an advocate is from 18 to 22. This is a non-working time, which is currently paid at a working time rate.

The coefficient of appeal against the decision on the election of a preventive measure or an extradition decision.

In fact, this coefficient takes into account the result of the work of an advocate in cases where, according to the results of the consideration of the motion, a less severe measure of restraint is chosen, or the application of a preventive measure is generally denied.

The work of the advocate is not billable when, after the detention of a person, the investigator applies for a less severe preventive measure than detention, and cases when the investigator does not move for a preventive measure at all.

From the analysis of the table, it is seen that the appeal by the advocate of the decision of the investigating judge on the use of a preventive measure always positively affects the calculation of the amount of remuneration. *Therefore, it is financially advantageous for a defender to file an appeal in all cases of choosing a preventive measure in the form of detention.*

The coefficient of termination of participation of the advocate prior to the expiration of the order for the provision of legal aid.

This coefficient reduces the amount of remuneration.

Its importance depends on the moment of termination of legal aid.

Thus, if the refusal of the services of an advocate took place during the first confidential meeting, the coefficient of termination of the participation of an advocate prior to the expiration of the power of attorney to provide FLA has a value

of 0,5

while the coefficients of visits, actions, special categories and appeals applied with a value

of 1

If the advocate stopped providing legal assistance before the expiration of the power of attorney at times other than confidential meeting on any other grounds specified by law, the coefficient applies with a value

of **0,5**

Other coefficients – according to the parameters of the services provided.

The coefficient of a special category of the recipient

This ratio takes into account that some categories of persons receiving legal aid require an advocate to undertake special efforts.

A special category of recipient coefficient shall apply in case of legal aid to:

- § those at the age of 18 years;
- § those who cannot realize their right to defense themselves due to physical or mental incapacity (mute, deaf, blind etc.);
- § those who do not speak the language of the proceedings;
- § those carrying an infectious disease, which is confirmed by the relevant medical certificate;
- § those sentenced to imprisonment, detention in a disciplinary battalion of soldiers or restraint of liberty.

In the case of rendering legal aid to a person from the list above, the coefficient value is 1.1, two or more categories simultaneously – 1.2, in other cases – 1.

The coefficient the advocate filing the deed.

This coefficient reduces the amount of remuneration. Presently, this coefficient does not apply. During martial law, as well as within three months from the date of its termination or cancelation, the coefficient will be 1.

Rules for calculating the remuneration for the provision of legal aid in other orders in criminal proceedings.

The calculation rules are less complex and variable. In addition, some of the coefficients are similar to those described in respect of detention.

The main indicators for determining the amount of remuneration are the stage, the complexity, and the incentive coefficients.

Coefficient of the proceedings stage.

For each stage there is its own basic coefficient – a kind of reflection of the specific share of this stage in the dynamics of criminal proceedings. The values of this coefficient are influenced by two factors: whether the advocate participated in the preliminary stage of the proceedings and the completeness of participation in the stage.

In addition, the following factors are important for calculating the stage coefficient:

- § totality of participation of an advocate in procedural actions;
- § the presence or absence of the fact of termination of the provision of legal aid by an advocate on any grounds determined by law, until the completion of the current stage of criminal proceedings;
- § full consideration of evidence in the court of first instance;
- § duration of the stage of criminal proceedings;
- § the presence or absence of the fact of participation of an advocate in the preliminary stages of criminal proceedings.

The coefficient of special duration of the stage of pre-trial investigation of criminal proceedings depends on the extension of the pre-trial investigation and is:

§ up to one month –

0,05

§ up to three months, but more than one month –

0,125

§ up to six months, but more than three months –

0,175

§ more than six months –

0,25

To determine the total coefficient of the stage of judicial proceedings, the following applies:

- § the coefficient of completeness of consideration of evidence by the court;
- § coefficient of change in the composition of the court;
- § coefficient tied to return of the indictment;
- § the coefficient of the number of days during which the advocate participated in the court hearing.

The coefficient of completeness of consideration of evidence by the court, which is 0.5 in the case of consideration by the court of the indictment on the commission of criminal offense in simplified proceedings and trial by the court if only part of the evidence in accordance with Art. 349 of CPC of Ukraine.

The coefficient of change in the composition of the court, the value of which

is 0,33

multiplied by the number of changes in the composition of the court. This ratio is applied only in the case of retrial.

The coefficient of return of the indictment, which is applied in the case when at the preparatory court session decided to return the indictment for revision due to granting the motion of defense filed by the advocate, the value of which is 0.1, multiplied by the number of such returns.

The coefficient of the number of days during which the advocate participated in the court hearing, which applies when there were more than five such days at this stage of the proceedings and

is 0,017

multiplied by the number of court hearings.

In addition, the coefficient of complexity of criminal proceedings is calculated taking into account the following:

- § the degree of severity of the criminal offense;
- § number of episodes of criminal illegal activity of a person;
- § number of suspects accused in criminal proceedings;
- § election of preventive measure in the form of detention;
- § the identity of the person whose defense is carried out by the advocate, to a special category.

The determination of the amount of remuneration is also influenced by the total useless incentive coefficient.

For the incentive coefficient, the following results of the advocate's work are important:

- § refusal to grant the motion of the prosecutor(investigator) for the election of a preventive measure in the form of detention;
- § replacement or cancellation of the preventive measure in the form of detention;
- § acquittal or cancelation of the guilty verdict and closing of the proceedings by the Court of Appeal, Cassation Court, Supreme Court;
- § closure of the proceedings in the absence of a criminal offense, absence of a criminal offense event, lack of evidence and exhaustion of the possibilities of obtaining it;
- § exemption from criminal liability;
- § changing the legal qualification of a criminal offense;
- § reduction of the number of episodes of accusation;
- § probation;
- § the appointment of the least severe of the alternative penalties or more mild punishment than prescribed by law;
- § the sentence to minimum punishment;
- § application of compulsory measures of educational nature, not related to the referral of a minor to a special educational institution;
- § unsuccessful challenge of the court decision in case of its appeal by the prosecution in the court of appeal, cassation, the Supreme Court.

It is important that the results are taken into account only if they are the result of the work of an advocate. Therefore, the advocate must have documents confirming the relationship between the result and the work of the advocate.

Thus, to take into account the coefficient of change of preventive measure – the advocate must submit together with the deed of services rendered a copy of the motion for changing the preventive measure. Alternatively, in the text of the court's decision it should be stated that it was made upon consideration of the defender's motion.

In order to take into account, the coefficient of refusal to satisfy the prosecutor's motion for the election of a preventive measure in the form of detention, the defender's objections should be attached to the deed, or they should be reflected by the court in the ruling.

The work of the advocate may be confirmed by statements, motions, objections, the journal of the court, etc.

For the application of the incentive coefficient in the application of Art. 69 of the Criminal Code or the appointment of a minimum punishment the prerequisite that reduction of sentence should be applied by the court under all articles alleging the highest severity of crime. Therefore, this point should be borne in mind, in particular, when concluding a plea bargain in criminal proceedings.

The incentive coefficient in the case of release from serving a sentence with probation is applied only in the case of several episodes of prosecution.

In practice, there were problems in confirming the work of an advocate upon amending of charges by court. The work of the advocate may be confirmed also by a request to the prosecutor about the possibility of re-qualification of the actions of the accused.

Also, in case of early termination of the FLA order due appearance of a contractual, the FLA center considered that in this case, legal aid was not provided. To refute such a remark, it is necessary to provide confirmation of participation in any investigative or procedural action.

Peculiarities of payment for the provision of FSLA by advocates in civil and administrative proceedings.

When determining the amount of remuneration of an advocate for representing the interests of persons entitled to FSLA in courts, other state bodies, local self-government, before other persons there is an urgent problem that the work of an advocate is paid only if the proceedings are opened. Thus, the claim prepared by the advocate will not be paid for if the client fails to submit it. In particular, often the FSLA recipients do not submit claims due to lack of funds to pay the court fee or simply because they do not want to spend these funds. But at the same time, the amount of work performed by an advocate does not change from whether the proceedings are opened or not. It is unfair to shift the risk associated with the behavior or capabilities of the client to the advocate.

In addition, a considerable number of documents drawn up by an advocate ends up being unpaid. Therefore, there is an urgent need to expand the list of paid documents. This refers to procedural documents that require significant work, which are, in particular, a motion for securing a claim, a motion for securing evidence, a motion for replacing one interim measure with another, a motion for the termination of the interim measure of securing a claim, a notice of amicable settlement agreement, a motion for the appointment of an expert examination, etc.

From the above, the following problems arise regarding the payment of the provision of FSLA by advocates:

- § permanent delay in payment;
- § low payment;
- § unfair algorithms for determining the amount of payment for services;
- § non-transparent scheme of acceptance of deed of services provided for payment, absence of mechanisms of settlement of disputes concerning payment;
- § absence of payment for s in case of termination of criminal proceedings.

Ways to solve these problems are:

- 1) adoption of amendments to the Resolution of the CMU “Issues of payment for services and reimbursement of expenses of advocates providing free secondary legal aid” developed jointly with the Bar;
- 2) establishment of the obligations of the FLA bodies to pay for services provided with the regulation of clear deadlines and the order of execution;
- 3) adoption of a normative act developed jointly with the Bar on the algorithm of acceptance of deed or services provided for payment, their verification and resolution of contradictions regarding the amount of payment;
- 4) public availability of information on issued orders and payment of services;
- 5) adopting amendments to the Law of Ukraine “On Free Legal Aid” regarding the introduction of such a ground for termination of the FLA order as the suspension of criminal proceedings.

3.4. Appointment of an advocate to participate in an individual procedural action

During 2023, the issue of appointing an advocate to participate in an individual procedural action has not lost its relevance. This issue is currently being considered in the context of abuse of procedural rights. The problem goes beyond the actual FLA system and acquires a general character in the criminal procedure.

However, the key aspect of this problem is that without the involvement of advocates providing FLA, the use of the institute of appointment of an advocate to participate in an individual procedural action to the detriment of the defense in criminal proceedings would be impossible.

The institution of appointment of an advocate to participate in an individual procedural action is currently one of the most powerful mechanisms of violation of the right to defense and equality of the parties to criminal proceedings in the domestic criminal process.

The Constitution of Ukraine provides for the right of every person to free choice of defender.

Defense in criminal proceedings is a complex, multi-level, coherent system of action, where each element requires attention and full utilization. Such a strategy and tactics are implemented by an indicted person, together with an advocate-defender.

Often, especially when the defense strategy and tactics are successful, the prosecution, and sometimes, unfortunately, the court, try to interfere, obstruct, impede the activities of the defense. After all, some judges to date consider the purpose of their activities "to ensure the rendering of convictions" And when such practice is countered by defense with its own vision of the future outcomes of the case, with its own motions., statements, evidence, etc., such defense may naturally and understandably be obstructed.

Currently, unscrupulous investigators, prosecutors and judges successfully use the mechanism of involving an advocate to participate in an individual procedural action with a hidden procedural purpose to prevent the real exercise of the right to defense.

According to the s. 1 Art. 53 of the Criminal Procedure Code of Ukraine, investigator, public prosecutor, investigating judge or court shall engage a defense counsel in an individual procedural action in accordance with the procedure set forth in Article 49 hereof exclusively in urgent cases, where the procedural action is required immediately, and the defense counsel who was informed in advance cannot appear to participate in such procedural action or send a replacement, or where the suspect or accused person is willing to have a defense counsel engaged, but either there was not enough time to engage defense counsel or the appearance of a counsel chosen is not possible.

The problem is that the law allows one to involve an advocate for urgent action but does not determine what action can be considered 'urgent'. The law does not address the question of whether the validity of the reasons for the absence of a defender affects the application of the said procedural mechanism.

Such a legal definition arose with a logical expectation that investigators, prosecutors, and judges will carefully determine the content of these concepts, taking into account the interests of both parties and the general interests of justice. However, in fact, the above-mentioned norm opened up wide opportunities for abuse without any restraint or a way to stop them.

The courts, knowing that their decision to involve a defender is mandatory for execution, use this authority too widely. Among other things, the practice of appointing a defender for consideration of the issue of extending the period of detention has become normal.

And it is in this issue that a whole arsenal of abuses has been formed: the court appoints a time for the consideration of the motion, without consultation with the defender under contract;; the court appoints a hearing solely for the consideration of such motion; the court does not comply with the terms of the due notice of the defender; the court schedules a hearing at a convenient time, although the motion may be considered at other times, with the participation of the defender under the contract, etc. There are many complaints from advocates that in this way the courts are trying to eliminate inconvenient advocates.

The involvement of an advocate in consideration of the preventive measure can still be called an "individual procedural action." However, in practice, there are cases when the investigator, for example, tries to involve the advocate into familiarization with the materials of criminal proceedings at its completion. And a very egregious case is the involvement of an advocate by the court to participate in the court debate.

While FLA center may refuse to comply with the investigator's ruling, it cannot refuse to comply with the court decisions of investigative judges, because the court decision on the involvement of a defender for an individual procedural action is mandatory for execution by the body authorized by the law to provide FLA.

The defenders suffer the most from such manipulations. Moreover, both those providing defense under the contract, and those involved to provide FLA.

It is worth to imagine a situation of a complex case, where the position of defense is developed, where each action and each speech of the defense party matter, where there is trust between the advocate and the client, the court appoints the hearing at the time when the advocate can not take part in the trial. And some unscrupulous judges deliberately seek exactly this time. The arguments of the defender are ignored, the fact that he has another court session, or vacation, or planned treatment – is not taken into account, because he should always be at the service of this panel of the court. The damage caused to the Bar in such a situation, is impossible to overestimate. After all, from an equal participant in the proceedings, the defender turns into a procedural hostage, who must be here and now at all times. There may lead to misunderstandings between the advocate and the client because the interests of the client are opposed to the personal interests or other cases of the advocate. In this way, the unscrupulous court makes it clear "who is the master here".

It would seem that in such a situation, the defender under the contract must fundamentally defend its own rights and rights of a client, file a motion for continuance of the hearing enumerating valid reasons for his absence, because both the CPC and the practice of the European Court of Human Rights are on his side. But such principled behavior stands in the way of the institution of appointment of an advocate for an individual procedural action. The advocate did not come, that is fine. The Court immediately engages the advocate through the FLA Centre. Sometimes the ruling on the involvement of such an advocate is provided before the start of the hearing, where contractual advocate has not arrived, "just in case".

The advocate providing legal assistance under the contract, finds himself in a situation in which the hearing will certainly take place: with him or without him. Without a defender, obviously, in the best-case scenario, the chosen line of defense will not be executed. And the worst options can only be imagined.

That is, the defense party planned, for example, the submission of statements and motions, speeches, arguments, etc., and the court simply deprives the defense of the opportunity to do so, replacing the advocate under the contract with an advocate involved for an individual procedural action.

Thus, instead of an advocate under the contract, the FLA center condones appointment of an advocate for an individual procedural action.

Such an advocate also finds itself in an extremely uncomfortable situation.

It often faces distrust, negative attitude and even recusal from the client, because he has an advocate under a contract with which the position and defense strategy are agreed. The defender of client's own free choosing enjoys client's hopes and confidence for the execution of defense strategy. Another deliberately appointed advocate, contrary to the will of the client, is perceived as the enemy.

Therefore, there are cases of complaints from clients against advocates involved in an individual procedural action. And the very situation when it is necessary to defend a person who does not want the defense by this very advocate considered as an enemy, is extremely unpleasant.

In addition, such relations between an advocate and a client obviously do not meet even the minimum standards of trust and partnership, which must be met in view of both the nature of such legal relations and the requirements of the Rules of Professional Conduct.

On the part of his fellow advocate under the contract, an advocate involved in an individual procedural action may feel a negative attitude and receive instructions that go against the interests of the advocate involved.

The court, for its part, wants to see from such an advocate the maximum assistance in resolving those issues for which he was involved. FLA-involved advocates are often perceived by the court as partners to achieve the goals set by the court in a specific procedural situation.

Thus, in conducting its constitutional mission, acting on behalf of the FLA Center an advocate involved in an individual procedural action becomes an instrument through which pressure is exerted on the defense.

The basis for the problems of involving an advocate for conducting an individual procedural action is laid down in the legislation. A powerful tool provided by the legislation for ensuring the interests of the prosecution and the court has been created by neglecting the interests of the defense party and at the expense of advocates providing FSLA.

Due to the frequent abuse of such opportunities, there is a split among advocates, an artificial opposition between advocates under a contract and advocates providing FLA.

And the main thing is that there is no benefit from this institution to ensure the right to protection. After all, there is no real insurance of the right to defense from the involvement of an advocate for an individual procedural action.

We emphasize that defense in criminal proceedings is arranged so that it is impossible to allocate participation in an individual procedural action from the general design of protection against suspicion (charges). The use of the institution of involving an advocate in an individual procedural action allows creating only formal external appearance and de facto ignoring the real right to defense.

During 2023, the topic of involving an advocate for an individual procedural action was actively exposed in the media. Without denying certain rational ideas, the Bar notes that often the principled position of the FLA centers with disregard of groundless decisions of the investigator and/or the prosecutor, would significantly reduce the scale of this problem.

For what its worth, the question of why the participation of an advocate in an individual procedural action should be ensured at the expense of taxpayers is very reasonable. But it is much bigger. After all, among the costs of organizing and providing legal aid at the expense of taxpayers there is a considerable number of those that cannot be called fair and justified. And the involvement of an advocate in the criminal procedure is not the most pressing one among them.

The appointment of an advocate to participate in an individual procedural action is another example of a situation in which ignoring the position of the Bar leads to the creation of mechanisms used to the detriment of fundamental human rights. After all, it is the Bar, having a powerful experience in ensuring the right to defense in a variety of situations, can help to form adequate procedural mechanisms.

This issue has a marked assessment by the Bar, which, among other things, was formed during the round table "Free Legal Aid in Ukraine. Ways out of the crisis, which took place in February 2023.

Unfortunately, the position of the Bar is not properly taken into account in this matter.

Ways to solve the problem:

- 1) optimization of legal regulation of involvement of an advocate to participate in an individual procedural action with the consultation of the Bar;
- 2) holding events together with representatives of the judiciary to develop a collective understanding of the rules for the involvement of advocates to participate in an individual procedural action and improve the cooperation on the part of all parties to the proceedings.

3.5. Participation of advocates in criminal proceedings *in absentia***During 2023**

there were many questions related to the destructive position of the FLA centers on the organization of defense in the pre-trial investigation of crimes against the foundations of national security.

Since the beginning of the war, the number of proceedings investigating crimes against the foundations of national security has increased significantly. For example, according to the information of the judiciary in 2022,

2334 such proceedings

were pending before the courts of first instance,

and in 2023

5843 proceedings

At the same time, in the absolute majority of cases, the suspects are absent on the territory of Ukraine and their interests were not represented by the defenders under the contract. Advocates providing FSLA are involved as the defense in such proceedings.

The practice of organizing the provision of FLA in such proceedings is characterized by the systematic implementation by the bodies of the FLA system of non-constructive positions.

For example, the CC Director, during a joint event with the participation of representatives of the Bar, publicly expressed in favor of prosecution of advocates participating in criminal proceedings in the absence of a suspect (accused) in violation of the Rules of Professional Conduct.

However, criminal procedure legislation provides for this possibility and regulates the procedure for the implementation of the proceedings in absentia, that is, in the absence of the accused.

Structures, similar to in absentia construct in Ukraine are used in a number of European countries.

The practice of the ECHR certifies the compliance of the consideration of cases in absentia with the requirements of the Convention in case of observance of certain guarantees and conditions for ensuring the general justice of the proceedings (decision of the Grand Chamber of the ECHR of 01.03.2006 in the case of Sejdivic v. Italy); ECHR judgment of 12.02.2015 in the case of Sanader v. Croatia). One of such conditions is representation of the interests of persons whose cases are considered in absentia.

Thus, in absentia proceedings are legislatively regulated which meets the international standards of justice, provided that the defender of the missing suspect (accused) is involved therein. The current legislation positively solves the relevant issue, defining the participation of the defender as a mandatory condition of the proceedings in the absence of the accused (special pre-trial investigation, special court proceedings, the election of a preventive measure under the rules of s. 6 Art. 193 of CPC of Ukraine).

Thus, the participation of the defender in criminal proceedings, which is carried out in the absence of the suspect (accused), meets not only the requirements of criminal procedural legislation, but also international standards for ensuring the justice during trial.

At the same time, such a procedure for considering cases is not created by advocates but is only conducted by them.

With its actions and public statements, the FLA body assesses the form of legal assistance provided by an advocate in a court hearing (independently or simultaneously with the client) as acceptable or unacceptable. Threatening to pay for the service provided, the CC is trying to create an interest in advocates to ensure the presence of its clients in all investigative and procedural actions. Such interest is consonant with the interest of law enforcement agencies, which traditionally try to transfer to the advocate part of their duty due to the proper notification of the suspect, the delivery of procedural documents to him, etc.

In the positions expressed by the CC, there is a potential threat of pressure on the right of an advocate to choose such a procedural position in the case, which consists in self-participation in the meeting in the absence of a client, stating to the investigating judge that the client is unaware about the motion, about the violation of the method of notification of the suspect, etc. Such a position is defective, since the payment for the services provided in the court comes under threat. The FLA client ends up limited in his rights in comparison with the client of the advocate under the contract.

Also, the CC makes conclusions about the coordination or disagreement of the advocate's position with the client solely on the basis of the fact a personal meeting of the advocate with the client. In this way, the clients of the FLA are deprived of the opportunity to agree upon the position with an advocate by phone or any other means of communication. The advocate is thus forced to initiate the necessary personal meeting with the client. The very possibility of providing legal assistance to a person with whom there was no personal meeting is denied. And in general, the assessment by the FLA body of the issue of agreeing the position of the advocate and the client is groundless and amounts to the encroachment against the professional legal privilege.

The CC's position is contrary to the current legislation.

The decision of the CC amounts to unlawful interference with the legal position of the advocate in the case, but also puts pressure on the advocate, prompting him to choose a position comfortable for other bodies.

According to s. 11 of Art. 23 of the Law of Ukraine "On the Bar and Practice of Law", which is called "Guarantees of Legal Practice", it is prohibited to interfere with the legal position of an advocate.

Thus, the position of the CC regarding the presence of violations in the actions of an advocate defending the missing suspect (accused) when considering the petition for the election of a preventive measure under s. 6 Art. 193 of the CPC of Ukraine, in the course of special pre-trial investigation and special court proceedings, is not based on the norms of the current criminal procedural legislation and international standards for ensuring the justice of criminal proceedings.

The choice of specific forms and methods of participation in investigative and procedural actions, court hearings in criminal proceedings within the limits established by the current legislation, belongs to the scope of the concept of "position of the advocate in case", the intervention thereto is prohibited in accordance with ss. 11 s. 1 Art. 23 of the law of Ukraine "On the Bar and Practice of Law". Direct or indirect interference of the FLA bodies with the position of the advocate in case, including public negative assessments of the legitimate behavior of advocates and also by way of unjustified benefits in payment, depending on personal participation in the investigative and procedural actions of his client, is prohibited.

The fact of communication between the advocate and the client, as well as the content, method, form, means and other aspects of such communication are included in the concept of "professional privilege." The advocate is free to choose forms, methods, means of communication with the client.

The corresponding position of the CC Director of the CC has never been refuted by him.

An incredibly positive step in the context of this very problem was the adoption of an appropriate clarification on the participation of advocates in criminal proceedings in the absence of a suspect (accused) on 27.12.2022, which now significantly [helps advocates to provide defense in this kind of cases](#).

In addition, the centers for the provision of FLA do not ensure continuous participation of the defender in such proceedings.

The practice has been formed, according to which the FLA centers issue an order for advocates to conduct an individual procedural action for consideration of a motion for the election of a preventive measure and for consideration of a motion for a special pre-trial investigation. And then – another order for the defense issued when the investigation is complete and familiarization with the case materials ensues, as well as the presentation of formal accusation.

In this way, the uninterrupted defense, which should ideally occur continuously boils down to episodic participation.

The order to participate in the conduct of an individual procedural action does not give the advocate the authority to appeal the decision, rendered as a result of consideration of the relevant motions. Moreover, the issue of appeal cannot be decided solely by the results of participation in the consideration of the motion and can be resolved only by an advocate who systematically defends in criminal proceedings.

While the accused is absent, the defender has the authority to appeal the decision to elect a preventive measure and to conduct a special pre-trial investigation. This state of affairs does not strictly comply with the general principles of criminal proceedings and does not ensure its justice.

Also, the bodies of the FLA create instability in the terms of the order validity in cases where a special pre-trial investigation was conducted.

Thus, during the event held by the FLA Regional Center in Vinnytsia, which took place on 20.04.2023, the representative of the CC Drelinsky S. V. explicitly stated that with the end of a special pre-trial investigation, the powers of the advocate are terminated as well. The order issued at the stage of pre-trial investigation, does not empower the advocate to participate in the preparatory court hearing. Despite the fact that the order itself has the validity "until the closure of criminal proceedings"; the end of the last of the judicial proceedings reviewing court decisions; the exhaustion of all national remedies," given the special case - the implementation of a special pre-trial investigation, the order lapses at the time of the end of the pre-trial investigation. The court shall independently involve the advocate with a ruling on the appointment of a special trial.

This position of the CC caused a great concern among advocates providing the FSLA in the relevant criminal proceedings and led to massive postponing of court proceedings dictated by the need to renew the powers of defenders.

Under the pressure of such circumstances and as a result of the implementation of the Bar's protest against this issue, the CC finally recognized its position as false.

This allows us to assert that the position and statements of the CC to be incorrect with respect to advocates, because the bodies of the FLA systematically create incomprehensible and opaque rules for determining the validity of advocates' powers, including retrospectively. This is especially harmful in sensitive cases, which include criminal proceedings against the foundations of national security, in which advocates are subjected to pressure and illegal identification with the client.

Despite the fact that the described problem is currently technically eliminated, the global way to solve it is to optimize the criminal procedural legislation with the participation of the Bar. As well as establishing constructive cooperation between the FLA bodies and advocates in order to coordinate positions in such new and inconvenient situations.

3.6. Identification of an advocate with the client

The rights of advocates are protected by a system of state guarantees, among which there is a prohibition of identification of an advocate with a client (Article 23 of the Law of Ukraine “On the Bar and Practice of Law”).

At the same time, the above-mentioned legislative provision should be considered not only as a prohibited legal norm, requiring everyone to refrain from actions to equate an advocate with his client, but also as a binding legal norm, which provides for the duty of the state in the person of its bodies and officials to take measures, aimed at preventing and stopping any cases of identification of an advocate with a client.

The ban on identifying advocates with clients is also an international standard of guarantees of legal practice and established by the “Basic Principles on the Role of Lawyers” adopted by the VIII United Nations Congress on the [Prevention of Crimes in August 1990](#).

States should take all necessary measures to ensure respect for the legal profession advocate, its protection and promoting its freedom without discrimination and without undue interference from the authorities or the general public, in particular in view of the relevant provisions of the European Convention on Human Rights. Advocate cannot be subjected to sanctions or pressure if they act in accordance with their professional standards (Principle I of the Recommendation R(2000)21 of the CoE Committee of Ministers to Member States on the freedom of professional activity of lawyers, adopted by the [Committee of Ministers of the Council of Europe on 25.10.2000](#)).

In the FLA system, a significant part of Ukrainian advocates currently works, who, in fact, without choice, carry out the orders the centers in the most problematic cases. At the same time, their vulnerability in the context of the problem of identifying advocates and clients has its own specific issues inherent only for in these legal relations.

A significant part of the cases led by advocates as a result of cooperation with the FLA system in criminal cases, which are a typical legal environment for the generation of the problem of identification.

As you know, by the general rule, the advocate provides legal aid on the basis of the contract with the client. These contractual relations are characterized by all the features of civil relations, including the freedom of choice of an advocate by the client and vice versa.

Usually it is the clients who turn to advocates, initiating the provision of legal assistance, and advocates, assessing the possibility of providing such assistance, in addition to their own qualifications, specialization, identity of legal positions with the client, etc., assess for themselves the acceptability of participation in the case for a number of not only formal ethical standards, but also in accordance with their own, sometimes, individual, ethical standards.

That is, when concluding an agreement on the provision of legal assistance, not only the client chooses an advocate, but also the advocate chooses for himself the option: whether to help this client or not.

In addition, Art. 17 of the Rules of Professional Conduct expressly states: the advocate has the right to refuse to accept the client's case for any reason and without explanation.

And when an advocate, acting in such conditions of maximum variability, decides to provide legal assistance, for example, to an alleged serial killer or pedophile, he (although ideally should not have such a need) has the opportunity to assess and assume the risks of being identified with a client, which, although prohibited, to some extent occurs in every “significant” case, which, causes indignation of society.

The FLA advocates operate in a completely different environment, under the orders of the FSLA centers.

First, they do not have the opportunity to choose their customers, it is chosen for them by the state in the person of a particular employee of the relevant FLA center.

Secondly, if we talk about the potentially most detrimental cases from the point of view of identifying the advocate and the client, they exist predominantly in the system of FLA.

If we talk about criminal proceedings, the most difficult, most unacceptable, and acute for society cases go through the system of FLA.

From crimes against sexual freedom of minors and to war crimes, the persons who committed them almost never have a contracted advocate. This is mainly due to the fact that the advocates themselves do not want to provide assistance to such criminals and, experiencing internal conflict, refuse such clients. Of course, not the least role in this has a reasonable forecast for identifying an advocate and such a client. However, the participation of a defender in cases of committing especially grave is mandatory and therefore such persons are appointed an advocate at the expense of the state from among the FSLA advocates.

So, there is a situation where:

§ a significant part of the most outrageous criminal cases for society ends up in the FLA system;

§ persons suspected or accused of the grave or especially grave and unacceptable crimes, have the right to defense guaranteed by the Constitution of Ukraine;

§ such right must be ensured by advocates, unilaterally identified, and appointed by the FLA center.

That is, advocates who did not choose these clients did not take into account the prognosis of potential reputational losses due to their identification with clients, cannot compensate for this, for example, with a larger fee, but being obliged to fulfill such orders, are the most vulnerable group of advocates and need the greatest protection.

Of course, **if the state itself has taken over the administration of this process, it also assumed the responsibility to take measures to prevent the identification of advocates cooperating with the FLA system with their clients.**

This became especially important after February 24, 2022 – since the open military aggression of Russia against Ukraine. In particular, almost unknown to the Ukrainian law enforcement, war and war crimes have become the new normal of the legal reality and exist in the form of thousands of criminal proceedings against the citizens of the aggressor state.

There is no need for a special explanation that Ukrainians have zero tolerance for such crimes and such criminals, and all hatred of the Ukrainian people towards war and its horrors is poured on them.

Advocates obliged to provide FSLA to such suspects and accused are subjected to unfair condemnation, criticism and even outright hatred and harassment by those who do not know or do not understand the ban on identifying an advocate with a client.

Another specific manifestation of the existence of the problem of identifying advocates and clients in the FLA system is the already well-established expectation of society that advocates will not provide high-quality legal assistance to condemned war criminals.

The society has formed the opinion that an advocate who works under a contract, that is, to whom the client pays money himself, a priori tries and more conscientiously, actively, and fruitfully provides legal assistance than the one providing assistance to the client free of charge.

And although the FLA is not free, but simply paid for by taxpayers, the bulk of people do not think about it. Now the public sentiment dominates that FLA is really free, and therefore definitely of inferior quality.

Ukrainian society has formed an absolutely uncivilized standard over the past two years: people believe that defense against prosecution of war crimes, military, and other crimes “painful” for society can only be provided on behalf of the state, because a patriotic advocate will not agree to defend the aggressor for money. It follows, that the advocate providing such assistance almost under compulsion and even free of charge, must provide it poorly. If the advocate provides quality FLA or the advocate, does it under the contract, then he is the same as his client.

There are many cases of public harassment of advocates for the quality of legal assistance provided to war criminals.

This issue was also investigated within the framework of the USAID Justice for All Program. Researchers interviewed advocates providing FSLA, as well as judges, prosecutors, as well as advocates, trying war crimes cases. In general, half of advocates defending clients in this category of cases pointed to the negative reaction of the society regarding their participation.

According to the results of the study, it was determined that there is an identification of advocates with the clients, and advocates in this category of cases often face threats and public condemnation.

Similar conclusions were formed by the result of the round table held at UNBA 27.04.2023.

According to the results of the meeting of three specialized committees of UNBA: For the Protection of Advocates' Rights and Professional guarantees, Information Policy, and Security, on the issues of the FLA, a conclusion was drawn about the need to introduce criminal liability for identifying an advocate with a client.

It should be noted that although in 2023 the struggle of UNBA with the identification of advocates with their clients has intensified, however, numerous measures have been taken to overcome this toxic phenomenon.

The issues related to the violation of the above-mentioned ban have repeatedly been the subject of decisions of the BCU.

For example, in the decision of the BCU No.35 of 18.06.2020 "On inadmissibility of identification of an advocate with a client" it is emphasized, in particular, the presence of not only national, but also international standards, which regulate professional rights and guarantees of legal practice. It is noted that advocates should not be identified with clients and their cases in connection with the performance of professional duties; at the same time, the advocate must have criminal and civil immunity from prosecution for statements relating to the case made in writing or orally in the exercise of his duty in good faith and the exercise of professional duties in court.

In the decision of the BCU No.49 of 05.05.2020 "On prevention of identification of advocates with clients and interference with professional rights of advocates" it is indicated, the prohibition mentioned in Article 23 of the Law of Ukraine "On the Bar and Practice of Law" is aimed primarily at the unimpeded provision of professional legal assistance and ensuring a high level of quality and efficiency of providing professional legal assistance and it is one of the guarantees of everyone's right to a fair trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms). At the same time, the right to professional legal assistance is an integral part of the right to a fair trial (Article 6 of the Convention) and the right to judicial protection (Article 55 of the Constitution of Ukraine). This guarantee of advocacy is aimed at providing clients of advocates with effective legal assistance and is a state-guaranteed safeguard against any outside influence. Numerous cases of identification of advocates with clients pose risks for the establishment in Ukraine of the principles of the rule of law, independence of the justice system, guarantee of the right of every citizen to professional legal assistance, as well as compliance with the key values of the legal profession, which are independence, self-governance, and self-regulation.

UNBA has repeatedly adopted other decisions aimed at protecting the rights of advocates from identifying them with clients.

Also in 2023, dedicated training events were held for advocates concerning prohibition of the identification of advocates with their clients.

Despite the fact that protection of advocates providing FSLA should be one of the priority tasks of the FLA system itself, neither the CC, nor the Ministry of Justice counter these issues, also failed to join UNBA in this campaign.

Given the above ***the workable solutions for this are:***

- 1) introducing criminal liability for identification of advocates with the client;
- 2) combining the efforts of the UNBA, the Ministry of Justice, the CC, the Commissioner of Verkhovna Rada of Ukraine for Human Rights, and other subjects in the implementation of legislative, organizational, and other measures aimed at combating this phenomenon.

3.7. Termination of provision of FSLA in suspended criminal proceedings

A distinct problem identified as urgent in 2023 is the problem of lack of proper regulation of termination of FSLA provision in suspended criminal proceedings.

In case of suspension of criminal proceedings, the provision of legal aid to a person is actually suspended as well, because with the suspension of procedural activities, there is no immediate need in legal aid anymore.

However, the relevant ground for the lawful termination of the FSLA provision in Art. 23 of the Law of Ukraine “On Free Legal Aid” is currently absent.

Thus, the orders continue to be valid, and advocates can not get payment for the services provided.

If we are talking about the search of a person, it is impossible to even predict the possible time period for the resumption of the proceedings. Such a person may never be found out at all. However, the advocate provided a certain amount of work, which must be paid for in a timely manner. The existing legal regulation in this way violates the right of an advocate to be paid for the services provided.

The problem is currently relevant, cases of suspension of criminal proceedings are now widespread. At present, in the course of the trial, a large number of proceedings have been suspended due to the fact that the accused was called up for military service at the call during mobilization, for a special period.

The introduction of such a ground for termination of FLA provision as the suspension of criminal proceedings, will not be applied to a special pre-trial investigation or special proceedings, since in such cases only the suspect (accused) is placed on the wanted list, but the proceedings are not subject to suspension.

During 2023, UNBA formed its proposals on this issue, however, changes to the legislation were not adopted.

Therefore, **the only effective way to solve this problem is to** amend s. 1 Art. 23 of the Law of Ukraine “On Free Legal Aid” by supplementing it with s. 10 as follows: “10) *suspension of criminal proceedings in which a person is provided with free secondary legal aid.*”

CONCLUSIONS AND SUGGESTIONS

Thus, it can be generalized that the state of functioning of the FLA system in Ukraine is determined by:

- § shifting away from the idea of human being of the highest societal value;
- § the growth of excessive formalism and the dominance of form over content both in the functioning of the system and in the direct provision of FLA;
- § deliberate isolation of the Bar and UNBA from participation in ensuring the effective functioning of the outlined system, as well as the purposeful usurpation of the functions of management (governance) over advocates, which are legislatively defined as the exclusive functions of the Bar self-government;
- § reduction of quality of FLA due to absence of legally defined FLA quality control, as well as economic and organizational demotivation of experienced advocates in cooperation with this system.

The mentioned negative phenomena in the FLA system have a stable tendency to deterioration.

The key reasons that determine the following state of functioning of the system of provision of FLA are:

- 1) complete obstruction of the work of the Supervisory Board of the Coordination Centre for Legal Aid Provision, which was supposed to ensure the democratic development of the system and minimize corruption risks therein (the Supervisory Board has not been functioning for almost two years and no response measures are taken);
- 2) isolation of the Bar from participation in the legislative, managerial and organizational processes of ensuring the functioning of the FLA system, which deprives the system of the ability to function taking into account the feedback from advocates – the main providers of the FLA, as well as using effective mechanisms of administration of the Bar, which are available in the UNBA (the Bar is capable and willing to use a wide arsenal of its own resources to improve the legislation on the provision of FLA in the paradigm of human orientation and improve the mechanisms for the application of such legislation to improve access to FLA and improve its quality);
- 3) lack of adequate participation of advocates as highly qualified professionals in the provision of free primary legal aid (at present such assistance rendered partially and mainly at the expense of state authorities and local self-government bodies, which significantly reduces its quality);

- 4) unjustified understatement of the amount of funding for the work of advocates providing free secondary legal aid, through the artificial creation of regulatory, financial, organizational, and ideological obstacles to the payment for the FLA provided by advocates at a level that corresponds to the average prices for this kind of service;
- 5) usurpation by the FLA system of the FLA quality assessment functions, from the Commissions for Assessing the Quality, Completeness and Timeliness of the FLA provision Advocates, legally so designated to by the Law of Ukraine "On the Bar and Practice of Law" (currently, the quality control of FLA is provided by subjects, who do not have the qualifications and competencies defined by law, which reduces the quality of such control and, accordingly, reduce the quality of the FLA).

In the context of protection of rights and freedoms of citizens, the mentioned problems of functioning of the FLA system have the following manifestations:

- § reduction of the FLA accessibility for certain categories of citizens (for example, members of families of missing servicemembers) due to unreasonable access to the FLA of other categories of citizens (for example, persons affected by gender-based violence);
- § deteriorating FLA quality, due to the range of providers and controllers thereof, as well as the dominance of purism over any other approaches to the organization of the FLA provision;
- § formation of procedural imbalance in criminal proceedings in favor of the prosecution, etc.

In the context of the rights and interests of advocates, the mentioned problems have the following manifestations:

- § demotivation of highly ethical and experienced advocates in cooperation with the FLA system of providing FLA and the desire to fill it with advocates inclined to tolerate the state model of management;
- § forced work of advocates in the conditions of the absence of equality of the parties to the contract, lack of decent wages and imperative management model;
- § forced violation by advocates of the Rules of Professional Conduct, which is directly dependent on the ability to cooperate with the system and receive remuneration for the services provided.

Correction of the situation is conceptually possible by way of legislative consolidation of the determining role of the Bar self-government bodies in the administration of the FLA provision (keeping the register of advocates providing FLA; monitoring the timely implementation of automatic order distribution; assessment of the quality of the FLA, etc.) **while maintaining the function of full financial control** of the authorized bodies of the state over the use of budgetary funds (determination of entities entitled to receive FLA; determination of the amount of payment to specific entities and on specific orders; control over the payment of orders for the volume and timing of work, etc.).

Improvement of the current state of functioning of the system of provision of FLA is situationally possible in the following ways:

- § legislative adjustment of categories of persons entitled to receive FLA (expansion of the list with family members of military personnel in criminal cases of forced disappearance, narrowing the list and/or increasing the FLA tier of access);
- § regulation at the level of delegated legislation of the interaction of bodies (institutions) authorized by the law to provide FLA, and bodies of Bar self-government, in particular, but not exclusively, in matters of assessment of quality, completeness and timeliness of the provision of FLA;
- § improving the economic motivation of advocates to provide FLA by restoring the possibility of payment for the execution of orders in suspended proceedings, as well as changing approaches to financing the system of FLA provision (increasing the expenditures towards compensating advocates by reducing the administrative costs for the functioning of FLA centers);
- § ensuring state control over the implementation by state authorities and local self-government of duties to provide free primary legal aid, etc.

In order to achieve the current tasks of improving the functioning of the FLA system in Ukraine, it is proposed to initiate and/or lobby the introduction of amendments to the following legal acts:

- 1) The Law of Ukraine "On Free Legal Aid;"
- 2) Resolution of the Cabinet of Ministers of Ukraine of 06.06.2012 No.504 "On the establishment of the Coordination Center for Legal Aid and the liquidation of the Center for Legal Reform and Legislative works under the Ministry of Justice";
- 3) Resolution of the Cabinet of Ministers of Ukraine of 11.01.2012 No.8 "On approval of the Procedure and conditions for concluding agreements with advocates providing free secondary legal aid";
- 4) Resolution of the Cabinet of Ministers of Ukraine of 28.12.2011 No.1362 "On approval of the procedure and conditions for the competition for the selection of advocates involved in the provision of free secondary legal aid";
- 5) Resolution of the Cabinet of Ministers of Ukraine of 17.09.2014 No.465 "Issues of payment of services and reimbursement of expenses of advocates providing free secondary legal aid";
- 6) Cancel the order of the Coordination Center for Legal Aid provision dated 09.04.2021 No.49 "On approval of the Procedure for the organization of monitoring of compliance by advocates with the quality standards for the provision of free secondary legal aid".

The measures identified by the previous report on particular issues of the FLA 2022 are subject to re-implementation (see s. 1.1 of the 2022 report).

However, **in order to achieve the conceptual goals of bringing the FLA provision system in Ukraine to standards of a legal, social, democratic state, it is expedient to adopt the new edition of the Law of Ukraine "On free legal aid" which will establish the new model for FLA system operation, led by a collective entity independent of the state, with the advocates playing the key role therein.**

LIST OF USED SOURCES

1. Constitution of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
2. USAID saw in Ukraine the identification of an advocate with a client (title from the screen). URL: <https://unba.org.ua/news/8526-usaid-pobachili-v-ukraini-ototozhnennya-advokata-z-klientom.html>.
3. UNBA acts (title from the screen). Official website of Ukrainian National Bar Association. URL: [https://unba.org.ua/akts-n\\$aa](https://unba.org.ua/akts-n$aa).
4. Free legal aid. 2022 Report. URL: <https://legalaid.gov.ua/wp-content/uploads/2022/08/zvitbpd-2022.pdf>.
5. Conclusion on inadmissibility of identification of an advocate with a client and interference with professional rights of advocates from 27.04.2023 URL: <https://drive.google.com/file/d/1W3DuGK5hOukaBD8unNlvmPoFys9GCcjB/view>.
6. Chair of Supreme Court “The courts are attacked by everyone, so one cannot expect any breakthrough from the judges” URL: <https://zib.com.ua/ua/142970.html>.
7. Some issues of organization of free primary legal aid by local self-government bodies: Resolution of the Cabinet of Ministers of Ukraine of 13.10.2023 No.1088. URL: <https://ips.ligazakon.net/document/KP231088>.
8. The Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Page/9>.
9. Prohibition of identifying advocates with clients through the prism of decisions of the Bar Council of Ukraine (title from the screen). URL: <https://www.hsa.org.ua/lectors/kuzmenko-savva-yevgenyovych/articles/zaborona-ototoznennia-advokativ-z-klijentami-cerez-prizmu-risen-radi-advokativ-ukrayini>.
10. Involvement of an FLA advocate in carrying out an individual procedural action should be limited to urgent cases. Official website of Ukrainian National Bar Association. URL: <https://unba.org.ua/news/7051-zaluchati-advokata-bpd-dlya-provedennya-okremoiprocesual-noi-dii-slid-lishe-u-nevidkladnih-vipadkah.html>.
11. Report on the results of the implementation of the project "Monitoring of court proceedings in cases of war crimes". URL: https://uba.ua/documents/1PR/PR%20%26%20Communications%202023/Monitoring%20report_UKR-1.pdf.
12. Report of the Free Legal Aid Committee of Ukrainian National Bar Association on current issues of the functioning of the of free legal aid system in Ukraine No.2022-p: Official website of Ukrainian National Bar Association. URL: https://unba.org.ua/assets/uploads/publications/%D0%97%D0%B2%D1%96%D1%82%20%D0%91%D0%9F%D0%94_2022.pdf.
13. Report of the courts of first instance on consideration of the materials of criminal proceedings for 2022. URL: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsa_u_2022.
14. Report of the courts of first instance on consideration of the materials of criminal proceedings for 2023. URL: https://court.gov.ua/inshe/sudova_statystyka/zvit_dsa_u_2023.
15. Abuse of procedural rights is an oxymoron, - Lydia Izovitova (title from the screen). Official website of Ukrainian National Bar Association. URL: <https://unba.org.ua/news/8528-zlovzhivannya-pravami-ce-oksymoron-lidiya-izovitova.html>.

- 16.** The range of recipients of the FLA should be expanded - BCU (title from the screen). Official website of Ukrainian National Bar Association. URL:
<https://unba.org.ua/news/8625-kolo-otrimuvachiv-bpd-slid-rozshiriti-rau.html>.
- 17.** Control over the quality of free legal aid must be done only by advocates(title from the screen) Official website of Ukrainian National Bar Association. URL:
<https://unba.org.ua/news/8401-kontrolyuvati-yakist-bezoplatnoi-pravnicchoi-dopomogi-vpravi-lishe-advokati.html>.
- 18.** Criminal procedure Code of Ukraine. URL:
<https://zakon.rada.gov.ua/laws/show/4651-17#Text>.
- 19.** Round table “Free Legal Aid in Ukraine. Ways out of the crisis.” Official website of Ukrainian National Bar Association. URL: <https://unba.org.ua/events/2603-kruglij-stil-%C2%ABbezoplatna-pravova-dopomoga-v-ukraini-shlyahi-vihodu-z-krizi%C2%BB.html>.
- 20.** Survey on problematic issues that exist in the field of free legal aid (FLA) (title from the screen). URL:
<https://www.hsa.org.ua/blog/opituvannia>.
- 21.** The Basic Principles on the role of Lawyers, approved by the VIII Congress of the United Nations on the Prevention of Crime in August 1990. URL:
https://zakon.rada.gov.ua/laws/show/995_835#Text.
- 22.** Identification of advocates cooperating with the FLA system with clients: Member of BCU from Khmelnytskyi region Oksana Kadenko (title from the screen). Official website of Ukrainian National Bar Association. URL:
<https://www.hsa.org.ua/lectors/kadenko-oksana/articles/ototoznennia-advokativ-iaki-spivpraciuiut-z-sistemoiu-bpd-z-klijentami-clen-rau-vid-xmelnickoyi-oblasti-oksana-kadenko>.
- 23.** The first free lawyer left the FSLA Register (title from the screen). Law and Business, 21.01.2023 URL:
<https://zib.com.ua/ua/154554.html>.
- 24.** Issues of payment for services and reimbursement of expenses of advocates providing free secondary legal aid: Resolution of the Cabinet of Ministers of Ukraine of 17.09.2014 No.465. URL:
<https://zakon.rada.gov.ua/laws/show/465-2014-%D0%BF#n329>.
- 25.** Optimization of the system of free legal aid: Order of the Ministry of Justice from 08.05.2023 URL:
<https://legalaid.gov.ua/publikatsiyi-ta-resursy/chynne-zakonodavstvo/organizatsijno-rozporjadchidokumenty/>.
- 26.** The pilot project on free legal aid starts in Khmelnytskyi region (title from the screen). Official website of Ukrainian National Bar Association. URL:
<https://unba.org.ua/news/8626-pilotnij-proekt-z-bezoplatnoi-pravnicchoi-dopomogi-startue-na-hmelnichchini.html>.
- 27.** The Regulation on the Commission for Assessment of Quality, Completeness and Timeliness of the Provision of Free Legal Aid by Advocates: 05.07.2012 No.281 decision of the Bar Council of Ukraine. URL:
<https://zakon.rada.gov.ua/rada/show/vr281871-17#n6>.
- 28.** The Rules of Professional Conduct approved by the Reporting and Elective Congress of Advocates of Ukraine 09.06.2017 (with changes). URL:
<https://zakon.rada.gov.ua/rada/show/n0001891-17#Text>.
- 29.** R(2000)21 of the Committee of Ministers to CoE Member States on the freedom of professional activity of lawyers adopted by the Committee of Ministers of the Council of Europe on 25.10.2000. URL:
https://supreme.court.gov.ua/userfiles/R_2000_21_2000_10_25.pdf.
- 30.** On the Bar and Practice of Law" The Law of Ukraine from 5.12.2012 URL:
<https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

- 31.** On Free Legal Aid: Law of Ukraine No.3460-VI of 02.06.2011 URL: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>.
- 32.** On Amendments to certain Legislative Acts of Ukraine regarding simplification of access to Free Legal Aid: Law of Ukraine No.3022-IX of 10.04.2023 URL: <https://zakon.rada.gov.ua/laws/show/3022-20#n241>.
- 33.** On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine on the Protection of Human Rights by simplifying access to Free Secondary Legal Aid and improving the quality of its provision: Resolution of the Cabinet of Ministers of Ukraine of 11.03.2015 No.110. URL: <https://zakon.rada.gov.ua/laws/show/110-2015-%D0%BF#n138>.
- 34.** On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine on certain issues of provision of Mediation Services by the system of Free Legal Aid: Resolution of the Cabinet of Ministers of Ukraine of 2.09.2022 No.990.URL: <https://zakon.rada.gov.ua/laws/show/990-2022-%D0%BF#n2>.
- 35.** On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine on access to Free Legal Aid: Resolution of the Cabinet of Ministers of Ukraine of 7.11.2023 No.1163. URL: <https://zakon.rada.gov.ua/laws/show/1163-2023-%D0%BF#n2>.
- 36.** On Amendments to the Procedure for Maintaining the Unified Register of Advocates: Decision of the Bar Council of Ukraine No.124 of 04.11.2022 URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2023-01-02-r-shennya-rau-124_63b28a1c16c1f.pdf.
- 37.** On amendments to the procedure for providing free primary legal aid to entities established or engaged under contracts by local self-government bodies: Decision of the Bar Council of Ukraine No.105 of 23.10.2023 URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2023-10-23-r-shennya-rau-105_656707d499523.pdf.
- 38.** On approval of the procedure and conditions for concluding agreements with advocates providing free secondary legal assistance: Resolution of the Cabinet of Ministers of Ukraine of 11.01.2012 No.8. URL: <https://zakon.rada.gov.ua/laws/show/8-2012-%D0%BF#Text>.
- 39.** On approval of the procedure for organization of monitoring of compliance by advocates with the quality standards for the provision of free secondary legal aid: Order of the Coordination Centre for Legal Aid Provision dated 09.04.2021 No.49. URL: <https://zakon.rada.gov.ua/rada/show/v0049419-21#Text>.
- 40.** On approval of Clarifications on the participation of advocates in criminal proceedings in the absence of a suspect, accused: Decision of the BCU No.183 of 27.12.2022. Official website of Ukrainian National Bar Association. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2022-12-27-r-shennya-rau-183_63d129b90a174.pdf.
- 41.** On preventing identification of advocates with clients and interference with professional rights of advocates: Decision of the Bar Council of Ukraine No.49 of 05.08.2020. Official website of Ukrainian National Bar Association. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2020-08-05-r-shennya-rau-49_5f4637e9c8bd4.pdf.
- 42.** Inadmissibility of identification of advocate with the client: Decision of the Bar Council of Ukraine No.35 of 18.06.2020. Official website of Ukrainian National Bar Association. URL: https://unba.org.ua/assets/uploads/legislation/rishennya/2020-06-18-r-shennya-rau-35_5f1a93c324770.pdf.
- 43.** On the establishment of the Coordination Center for Legal Aid Provision and the liquidation of the Legal Reform and Drafting Center under the Ministry of Justice: Resolution of the Cabinet of Ministers of Ukraine of 6.06.2012 No.504. URL: <https://zakon.rada.gov.ua/laws/show/504-2012-%D0%BF#Text>.

44. The draft law "On Amendments to certain Legislative Acts of Ukraine concerning Simplification of Access to Free Legal Aid and Improvement of its Quality". URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71159.
45. Register of advocates (title from the screen). URL: <https://legalaid.gov.ua/advokatam/rejestr-advokativ/>.
46. The results of the survey from the Higher School of Advocacy of UNBA on the topic "Problematic issues of providing free legal aid" (title from the screen). URL: <https://www.hsa.org.ua/blog/rezultati-opituvannia-vid-vishhoyi-skoli-advokaturi-naau-na-temu-problemni-pitannia-nadannia-bezoplatnoyi-pravnicoyi-dopomogi>.
47. Decision of the Higher Qualification and Disciplinary Commission of the Bar 27.01.2023 No.I-002/2023. URL: <https://vkdka.org/rishennya-vkdka-i-002-2023-vid-27-01-2023-roku-za-skargoyu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-chernigivskoj-oblasti-u-skladi-distsiplinarnoji-palati-8-21-22-v/>.
48. Decision of the Higher Qualification and Disciplinary Commission of the Bar of 01.12.2021 No.XII-004/2021. URL: <https://vkdka.org/rishennya-hii-0042021-za-klopotanniam-advokata-schodo-zupinennya-diji-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-hmelnitkoji-oblasti-u-skladi-distsiplinarnoji-palati-47-vid-1/>.
49. Decision of the Higher Qualification and Disciplinary Commission of the Bar 26.05.2023 No.V-011/2023. URL: <https://vkdka.org/rishennya-vkdka-v-011-2023-vid-26-05-2023-roku-za-skargoyu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-chernivetskoji-oblasti-u-skladi-distsiplinarnoji-palati-146-vid-26-01-2/>.
50. Decision of the Higher Qualification and Disciplinary Commission of the Bar 29.09.2021 No.IV-008/2021. URL: <https://vkdka.org/rishennya-iv-0082022-za-skargoyu-advokata-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-m-kijeva-u-skladi-distsiplinarnoji-palati-628-vid-29-09-2021-roku-pro-porushennya-vidn>.
51. Decision of the Higher Qualification and Disciplinary Commission of the Bar of 26.05.2023 No.V-007/2023. URL: <https://vkdka.org/rishennya-vkdka-v-007-2023-vid-26-05-2023-roku-za-skargoyu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-chernivetskoji-oblasti-u-skladi-distsiplinarnoji-palati-149-vid-26-sich/>.
52. Decision of the Higher Qualification and Disciplinary Commission of the Bar of 31.01.2020 No.I-015/2020. URL: <https://vkdka.org/rishennya-i-0152020-u-spravi-za-skargoyu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-hmelnitkoji-oblasti-27-vid-31-07-2019-roku-pro-vidmovu-v-porushenni-distsiplinarnoji-sp/>.
53. Decision of the Higher Qualification and Disciplinary Commission of the Bar of 31.01.2022 No.I-017/2022. URL: <https://vkdka.org/rishennya-i-0172022-za-skargoyu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-hmelnitkoji-oblasti-u-skladi-distsiplinarnoji-palati-39-vid-30-09-2021-roku-pro-vidmovu-u-porush/>.
54. Decision of the Higher Qualification and Disciplinary Commission of the Bar 01.12.2021 No.XII-007/2021. URL: <https://vkdka.org/rishennya-hii-0072021-za-skargoyu-advokata-na-rishennya-kdka-m-kijeva-u-skladi-distsiplinarnoji-palati-569-vid-02-09-2021-roku-pro-prityagnennya-do-distsiplinarnoji-vidpovidalnosti-ta-zastosuvan/>.
55. Decision of the Higher Qualification and Disciplinary Commission of the Bar of 30.11.2021 No.XI-007/2021. URL: <https://vkdka.org/rishennya-hi-0072021-za-skargoyu-vischogo-antikoruptsijnogo-sudu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-m-kijeva-u-skladi-distsiplinarnoji-palati-545-vid-08-07-2020-ro/>.
56. Decision of the Higher Qualification and Disciplinary Commission of the Bar of 27.07.2023 No.VII-002/2023. URL: <https://vkdka.org/rishennya-vkdka-vii-002-2023-vid-27-07-2023-roku-za-skargoyu-na-rishennya-kvalifikatsijno-distsiplinarnoji-komisiji-advokaturi-zakarpatskoji-oblasti-u-skladi-distsiplinarnoji-palati-vid-12-kvitnya-2/>.

- 57.** Sanader vs Croatia: ECtHR decision from 12.02.2015 URL:<https://hudoc.echr.coe.int/rus#%7B%22itemid%22%3A%5B%5C%22001-151039%22%5D%7D>.
- 58.** Sejdivich vs Italy: The decision of the Grand Chamber of the ECHR from 01.03.2006 URL:
<https://hudoc.echr.coe.int/fre?i=001-185920>.
- 59.** System of the free legal aid in Ukraine: current problems and recommendations for its reform: Report of Ukrainian National Bar Association. Official website of Ukrainian National Bar Association. URL:
<https://unba.org.ua/assets/uploads/news/advocatura/2016-05-18.zvit.bpd.pdf>.
- 60.** The CPC will strengthen the responsibility of advocates for delaying cases and failure to appear in court after the death of the accused in the Shevchenko court, – the Chair of the Committee. URL:
<https://sud.ua/uk/news/publication/275373-v-upk-usilyat-otvetstvennost-advokatov-za-zatyagivanie-del-i-neyavku-v-sud-posle-gibeli-obvinyaemogo-v-shevchenkovskom-sude-glava-komiteta>.
- 61.** UNBA proposes to introduce criminal liability for identifying an advocate with a client (title from the screen). Official website of Ukrainian National Bar Association. URL:
<https://unba.org.ua/news/8026-u-naau-proponuyut-zaprovaditi-kriminal-nu-vidpovidal-nist-za-ototozhnennya-advokata-z-klientom.html>.
- 62.** Generalization of the disciplinary practice of the Qualification and Disciplinary Commissions of the Bar on the provision of FLA by advocates: Decision of the Higher Qualification and Disciplinary Commission of the Bar of 28.12.2023 No.XII-011/2023. URL:
<https://vkdk.org/uzagalnennya-distsiplinarnoji-praktiki-kvalifikatsijno-distsiplinarnih-komisij-advokaturi-z-pitan-nadannya-advokatami-bezoplatnoji-pravnichoji-dopomogi/>.
- 63.** Ukrainian-German Bar Forum: there is something to learn. URL:
<https://yur-gazeta.com/publications/events/ukrayinskonimeckiy-forum-advokativ-e-chomu-povchitsiya.html>.
- 64.** Why Ukrainian advocates protect Russian prisoners (title from the screen). Law and Law, 09.12.2022 URL:
<https://www.dw.com/uk/statisti-ci-profesionali-comu-ukrainski-advokati-zahisaut-polonenih-rosian/a-64021082>.
- 65.** Regarding the use of the FLA system to create a procedural imbalance in criminal proceedings in favor of the prosecution. URL:
<https://advokatpost.com/shchodo-vykorystannia-systemy-nadannia-bpd-dlia-stvorennia-protseusualnoho-dysbalansu-u-kryminalnykh-provadhenniakh-na-koryst-storony-obvynuvachennia-advokat-kushnir/>.
- 66.** How will advocates evaluate the work of advocates? The resolution of the Cabinet of Ministers needs changes (the title from the screen). URL:
<https://unba.org.ua/news/8448-yak-specialisti-v-sil-radah-ocinyuvatimut-robotu-advokativ-postanova-kabminu-potrebue-zmin.html>.



**UKRAINIAN NATIONAL
BAR ASSOCIATION**

