

# **CONCEPT**

## **on the Restoration of the Ukrainian Bar in the De-occupied Territories of the Autonomous Republic of Crimea and the city of Sevastopol**

### **1. Introduction**

1.1. This Concept is developed on the following principles and foundations:

- based on the [Declaration of State Sovereignty of Ukraine](#) and the [Constitution of Ukraine](#), the laws of Ukraine,
- emphasizing that Ukraine's sovereignty extends to its entire territory, which within the internationally recognized state border is integral and inviolable,
- not recognizing the temporary occupation of part of Ukraine's territory by the Russian Federation,
- reaffirming the inalienable sovereign right of Ukraine to restore and preserve its territorial integrity within its internationally recognized state border,
- guided by the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of October 24, the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975,
- noting that, in the light of the provisions of the [Hague Convention \(IV\) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land](#) of October 18, 1907, the Geneva Convention relative to the Protection of October 18, 1907, [the Geneva Convention relative to the Protection of Civilian Persons in Time of War](#) of August 12, 1949, and [Additional Protocol to the Geneva Conventions Relative to the Protection of Victims of International \(Protocol I\)](#), of June 8, 1977, one of the consequences of the armed aggression of the Russian Federation against Ukraine was the temporary occupation of part of the territory of Ukraine,
- based on the provisions of the United Nations General Assembly resolutions "On the territorial integrity of Ukraine" of March 27, 2014, No. 68/262, "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)" A/RES/71/205 (2016), A/RES/72/190 (2017), A/RES/73/263 (2018), A/RES/74/168 (2019), A/RES/75/192 (2020), as well as "Problems of militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov" A/RES/73/194 (2018), A/RES/74/17 (2019), A/RES/75/29 (2020), which emphasize the illegitimacy of the referendum in the Autonomous Republic of Crimea, recognize the Autonomous Republic of Crimea and the city of Sevastopol as the territory temporarily occupied by the by the Russian Federation, and call on the international community not to recognize any change in the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the results of the said referendum,
- having regard to the United Nations General Assembly Resolution "Aggression against Ukraine" A/RES/ES-11/1 of March 2, 2022, which recognizes that Russia has committed aggression against Ukraine in violation of basic UN norms, and which requires the Russian Federation to cease its armed aggression against Ukraine, including the de-occupation of Crimea and Donbas, immediately, fully and unconditionally withdraw all its armed forces from the territory of Ukraine within its internationally recognized borders,

- taking into account the interim decision of the International Court of Justice of March 16 March 2022, according to which at the highest legal level it was stated the fact of Russia's invasion of the territory of Ukraine,
- taking into account the content of the judgment of the European Court of Human Rights of January 14, 2021 in Ukraine v. Russia (re Crimea) (application nos. 20958/14 and 38334/18), which recognized that the Russian Federation has established effective control over the Crimean Peninsula starting from February 27, 2014;
- taking into account the provisions of the Strategy of de-occupation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, approved by the Decree of the President of Ukraine No. 117/2021 of 4.03.2021,
- noting that the armed aggression of the Russian Federation began with undeclared and covert invasions of the territory of Ukraine by units of the armed forces and other law enforcement agencies of the Russian Federation at least since February 20, 2014, and escalated into a full-scale armed invasion of the sovereign territory of Ukraine on February 24, 2022.

1.2. After the de-occupation of the Autonomous Republic of Crimea and the city of Sevastopol, the development of these territories and the reintegration of their population will become an integral part of Ukraine's larger recovery plan.

1.3. This Concept formulates proposals and recommendations on possible challenges and necessary measures to restore the functioning of the Bar and bar self-government in the liberated Autonomous Republic of Crimea and the city of Sevastopol, including measures that can be taken now before the de-occupation, while these proposals can be implemented or taken into account during the restoration of the Bar in other de-occupied territories.

1.4. In this Concept, we proceed from the fact that according to Article 6 of the Law of Ukraine "On the Bar and Practice of Law", an attorney may be an individual who has a complete higher legal education, speaks the state language on the level determined in accordance with the Law of Ukraine "On Ensuring the Functioning of Ukrainian as the State Language", has at least two years of experience in the field of law, has passed the qualification exam, has completed an internship (except in cases established by this Law), has taken the oath of an attorney of Ukraine and has received a certificate of the right to practice law.

1.5. The certificates of the right to practice law issued by the occupation administration, any bodies, their officials and employees in the temporarily occupied territory are invalid and do not create legal consequences by virtue of parts 2 and 3 of Article 9 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine", except as may be provided by the legislation of Ukraine for the protection and restoration of human rights.

1.6. The restoration of the Ukrainian Bar in the de-occupied territories of the AR of Crimea and Sevastopol is considered in this Concept, among other things, as an important component of ensuring the right to fair justice and proper access to legal aid for the civilian population of the Crimean Peninsula, including victims of the consequences of the occupation and criminal actions of the Russian Federation.

1.7. The developments outlined in this Concept should be implemented by introducing appropriate amendments and additions to the Law of Ukraine "On the Bar and Practice of Law" and the Rules of Professional Conduct.

## **2. Restoration of the bar self-government bodies**

2.1. To develop (in particular, with the involvement of lawyers (attorneys) of internally displaced persons from the Crimean Peninsula, representatives of professional associations of lawyers (attorneys), independent experts of non-governmental organizations) and amend the Law of Ukraine "On the Bar and Practice of Law", providing for the possibility of holding a constituent conference of attorneys of the AR of Crimea and Sevastopol and the resumption of the Bar Council of the ARC and the QDCB of the ARC before the de-occupation of the Crimean Peninsula.

2.2. To provide legal grounds for the establishment of the Bar Council of the AR of Crimea and the QDCB of the AR of Crimea, whose jurisdiction will extend to the territory of two administrative territorial units - the AR of Crimea and the city of Sevastopol.

2.3 In the Law of Ukraine "On the Bar and Practice of Law", the Regulations of the Regional QDCB and the Regulations on the procedure for receiving and considering complaints on misconduct of attorneys that may result in disciplinary liability, provide for the possibility of considering complaints against attorneys who are in the occupied territory and whose notification of the consideration of a complaint is complicated or impossible, including through such consideration in real time when connected to the Internet, as well as ensuring communication through e-mail correspondence, etc.

2.4. The QDCB of the AR of Crimea should ensure proper consideration of complaints against attorneys whose activities in the occupied territory of the AR of Crimea and Sevastopol lead to violations of the legislation of Ukraine, violate the Rules of Professional Conduct, and harm the rights and interests of clients.

## **3. Issues of resumption of the Practice of Law and purification of the Bar**

3.1 Attorneys who have a certificate of the right to practice law obtained in Ukraine and who continued to practice law in the occupied territory, or permanently resided in the occupied territory, or moved from the government-controlled territory of Ukraine or temporarily occupied territories of parts of other territory of Ukraine to the territory of the Crimean Peninsula to continue their practice of law, are obliged to submit to the Bar Council of the region and the relevant interregional department of justice (or other administrative body authorized by law to conduct integrity checks/vetting of a person) a declaration in which they officially declare and confirm that they did not cooperate with the occupation authorities to the detriment of national security, to the detriment or in violation of human rights and citizens of Ukraine, were not members of its bodies, election commissions, armed groups, did not hold positions of judges, jurors, prosecutors, investigators, illegally established in the occupied territory etc.

3.2. The attorneys referred to in clause 3.1. shall have the right to practice in the entire government-controlled territory of Ukraine only after submission of the relevant declaration. The Ukrainian National Bar Association and the Bar Councils of the region should provide such attorneys with free access to proper and high-quality information and methodological support and advanced training for their reintegration and resumption of professional activity in the legal framework of Ukraine.

3.3. The declaration shall contain the following information about the attorney:

- full name, date of birth, place of registration and place of actual residence, telephone number

- date of issue, number of the certificate and the authority that issued the attorney's certificate of the right to practice law;
- information on whether the attorney has practiced law in the occupied territory, if so, in what form - individual or in the form of a law office, law firm, etc;
- notification from the lawyer that he/she:
  - did not cooperate with the occupation authorities to the detriment of the foundations of national security, to the detriment or in violation of human rights and rights of citizens of Ukraine, did not belong to its bodies, election commissions, armed groups, did not hold the position of a judge, jury, prosecutor, investigator, illegally established in the occupied territory;
  - did not hold senior positions in the so-called bar self-government bodies established in the occupation ("The Bar of the Republic of Crimea", "The Chamber of the City of Sevastopol"), which implemented the norms of Russian law on the territory of the occupied Crimean Peninsula, thus confirming and facilitating the occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the aggressor country Russian Federation, and also contributed to the colonization of the peninsula by lawyers from the Russian Federation;
  - was not an elected member of local occupation councils or authorities of the Russian Federation;
  - did not participate in or cover up the facts of torture of Ukrainian military personnel, activists or persons persecuted for political reasons, political figures, persons who worked for Ukrainian intelligence, including other categories of persons defined by the provisions of the Law of Ukraine No. 2010-IX "On Social and Legal Protection of Persons in respect of whom the fact of deprivation of personal liberty as a result of armed aggression against Ukraine and members of their families has been established", etc;
  - did not desecrate Ukrainian state symbols;
  - did not deny the fact of Russia's armed aggression against Ukraine, justify it, recognize it as legitimate, or glorify its participants;
  - did not publicly call for an illegal referendum in the Autonomous Republic of Crimea and the city of Sevastopol in 2014 on secession from Ukraine, including by distributing materials calling for such actions, providing any legal support for their organization and conducting;
  - did not participate in the organization and participation in the illegal referendum on the territory of the Autonomous Republic of Crimea and Sevastopol as a member of election commissions (as a chairman, secretary, member, observer, etc.) in 2014;
  - did not participate in the military propaganda of the Russian Federation, supplying the Russian army, or raising funds for the needs of the Russian army (or can prove the fact of coercion to provide such assistance);
  - did not participate in assisting in the organization and holding of illegal elections, referendums, etc. after 2014 in the occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, and did not visit the territories of Kherson, Zaporizhzhia, Donetsk and Luhansk regions occupied by the Russian Federation for the same purpose;
  - is not a member of Russian parties, blocs, political and public unions in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, whose activities are related to the violation of territorial integrity, national security of Ukraine, war propaganda, meeting the needs of the Russian army, politically motivated persecution of Ukrainian citizens for pro-Ukrainian views (in particular, within the meaning of the Law of Ukraine No. 2010-IX "On Social and Legal Protection of Persons in respect of Whom the Deprivation of

Personal Liberty as a Result of armed aggression against Ukraine, and members of their families"), etc;

- did not participate as a representative of the occupation authorities in the occupation and Russian courts, other structures and instances of the occupying state.

3.4. The submitted declaration shall be made public except for the information on the attorney's date of birth, place of registration and place of actual residence, telephone number of the attorney and other possible personal data of the attorney or his/her clients;

3.5. The public shall have the right to verify the information provided by the attorney and, in case of discrepancies, shall have the right to file a complaint to the Qualification and Disciplinary Commission for the revocation of the certificate of the right to practice law within the terms and in the form prescribed by law;

3.6. The Bar Council of the region and the relevant interregional department of justice (or other administrative body, which will be authorized by law to conduct the integrity check / background check of a person) shall be obliged to verify the information submitted by the attorney from publicly available sources and by collecting additional information, in particular, received from public associations, and, in case of discrepancies, shall have the right to file a complaint to the Qualification and Disciplinary Commission on the deprivation of the attorney's certificate of the right to practice law within the terms and in the form determined by law.

3.7. The information provided by the attorney in the declaration confirming the facts of his or her discrediting cooperation according to the list in clause 3.3. of this Concept shall be the basis for the Bar Council of the region and the relevant interregional department of justice (or other administrative body authorized by law to conduct the integrity check / background check of a person) to file a complaint to the Qualification and Disciplinary Commission within the terms and in the form prescribed by law to consider the issue of disqualification of the attorney from practicing law.

3.8. The mere fact that the attorney continues to practice law in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol shall not be a ground for disqualification of the attorney from practicing law in Ukraine.

3.9. The bar self-government bodies shall create a public register with information on the results of submission and consideration of the relevant declarations by attorneys.

3.10. Ensure liability for failure to submit the declaration or submission of knowingly false information in the declaration by the following means and under the following conditions:

- failure to submit the declaration or submission of knowingly false information in the declaration is a ground for deprivation of the attorney's right to practice law in Ukraine with the exclusion of data from the Unified Register of Attorneys of Ukraine;
- to provide legislative grounds for extending the term of disciplinary liability of attorneys who fall under the above stated criteria to three years from the date of filing the declaration;
- to provide exemption from payment of any duties, fees and charges, etc. for filing a complaint against attorneys who meet the criteria set out above in this clause of the Concept.

#### **4. Restoration of the bar self-government bodies**

4.1 To develop (in particular, with the involvement of attorneys of internally displaced persons from the Crimean Peninsula, representatives of professional associations of lawyers (attorneys), independent experts of non-governmental organizations) and amend the Law of Ukraine "On the Bar and Practice of Law" to provide for the possibility of holding a constituent conference of attorneys of the ARC and Sevastopol and restoring the activities of the Bar Council of the ARC and the QDCB of the ARC before the de-occupation of the Crimean peninsula.

4.2. To provide legal grounds for the establishment of the Bar Council of the AR of Crimea and the QDCB of the AR of Crimea, whose jurisdiction will cover the territory of two administrative-territorial units - the AR of Crimea and the city of Sevastopol.

4.3. The Law of Ukraine "On the Bar and Practice of Law", the Regulations of the Regional QDCB and the Regulations on the procedure for receiving and considering complaints on misconduct of attorneys that may result in disciplinary liability should provide for the possibility of considering complaints against attorneys who are in the occupied territory and whose notification of the consideration of a complaint is complicated or impossible, including through real-time consideration when connected to the Internet, as well as ensuring communication through e-mail correspondence, etc.

4.4. The QDCB of the AR of Crimea shall ensure proper consideration of complaints against attorneys whose activities in the occupied territory of the AR of Crimea and Sevastopol lead to violations of the legislation of Ukraine, violate the Rules of Professional Conduct, and harm the rights and interests of clients.

## **5. Monitoring of the observance by attorneys of the legislation of Ukraine, the rights of attorneys and guarantees of the Practice of Law**

5.1. Monitoring of violations of the legislation of Ukraine by attorneys who continued to practice in the TOTs.

5.1.1. The UNBA, until the Bar Council of the region resumes its activities, should ensure constant monitoring of violations of the law, facts of dishonest cooperation with the occupation structures by attorneys who continued their activities in the temporarily occupied territory of the Crimean Peninsula.

5.1.2. Given the duration of the occupation of the AR of Crimea and Sevastopol and the impossibility of physical control over the activities of the attorneys, to determine the following criteria and format of such monitoring:

- collection and evaluation of all known and available facts according to the list of information in clause 2.3. of this Concept, which shall be reported by the attorneys in the relevant declaration;
- taking appropriate measures by the bar self-government bodies to respond to the revealed facts;
- obtaining and processing information from appropriate open sources, resources of illegally created occupation structures, reports of witnesses and victims of violations, information from law enforcement and judicial authorities, etc;
- ensuring effective interaction with professional bar associations, NGOs, attorneys and internally displaced persons from these territories, etc;
- notification of the relevant competent authorities of Ukraine about the revealed facts of unfair cooperation of attorneys with the occupation structures for the purpose of proper response;

- the possibility of creating and maintaining a public register with information about the attorneys in respect of whom the facts of dishonest cooperation with the occupation structures have been revealed.

## 5.2. Monitoring of violations of the rights of attorneys and guarantees of the Practice of Law in the temporarily occupied territory.

5.2.1. The UNBA, until the Bar Council of the region resumes its activities, should ensure constant monitoring of the guarantees of the Practice of Law and possible violations of the rights of attorneys who continued their activities in the temporarily occupied territory of the Crimean Peninsula.

5.2.2 Given the duration of the occupation of the AR of Crimea and the city of Sevastopol and the impossibility of physical control over the observance of the rights of attorneys and guarantees of the Practice of Law, to determine the following criteria and format of such monitoring

- collection and assessment of all known and available facts of violations of the rights of attorneys and standards of legal profession by the occupation administrations in relation to Ukrainian attorneys who continued to work under occupation (in particular, attorneys who do not cooperate with the occupation administrations or work on human rights issues in politically motivated cases as a result of the Russian aggression);
- implementation of appropriate measures by the bar self-government bodies to respond to the revealed facts;
- obtaining and processing information from appropriate open sources and resources illegally created occupation structures, reports of witnesses and victims of violations, information from law enforcement and judicial authorities, etc;
- ensuring effective interaction with professional bar associations, public organizations, international monitoring missions, attorneys from these territories, attorneys of internally displaced persons, etc;
- reporting the revealed facts of violations to the responsible authorities and international structures for response;
- systematic informing of the bar self-government bodies, professional bar associations, and the general public about threats to the observance of the standards of legal profession and violations of the rights of attorneys under the occupation.

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