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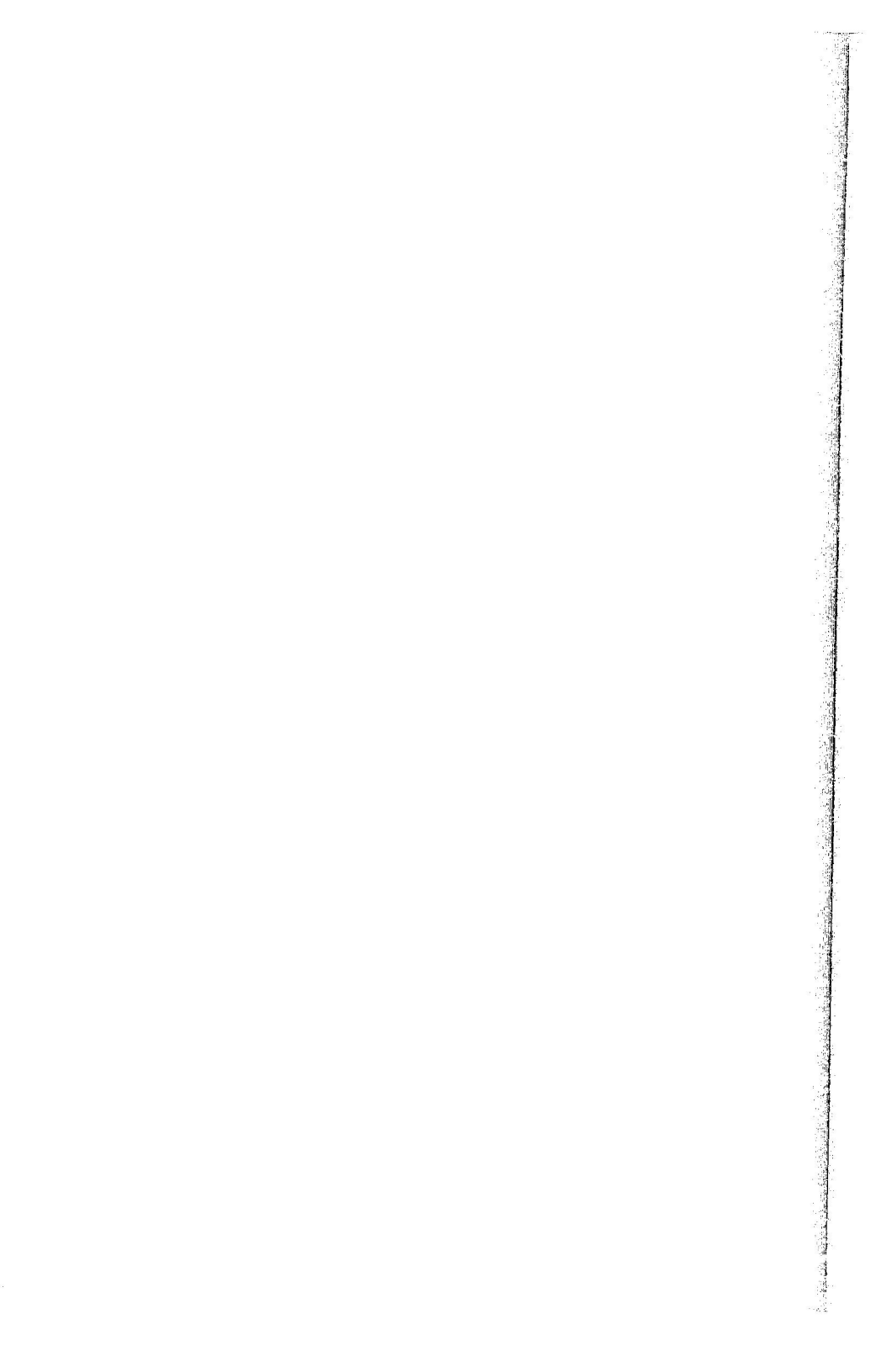
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PREPARATION TO PERFORM THE PROFESSION OF ADVOCATE:
COMPARATIVE ANALYSIS OF REGULATIONS
IN POLISH, UKRAINIAN, BELARUSIAN AND RUSSIAN LAW

*Andriy Kosylo*¹

The profession of advocate, which consists in providing legal aid, takes important systemic place in a democratic rule of law system. It follows, that without getting qualified legal aid, the realization of the access to justice becomes difficult. Moreover, effectiveness of functioning of the administration of justice system and security and reliability of legal transactions in state organization depends on quality of provided legal aid. Therefore in order to provide realization of those tasks, for the persons who perform profession of advocate there are set some requirements concerning education, having theoretical knowledge, practice, and ethical features.

In this article is described the following requirements of candidates for advocates which are aimed at providing a proper standard of their preparation to perform the profession:

1. education of a candidate for advocate,
2. practical preparation to perform the profession,
 - 2.1. performance of the advocate's apprenticeship,
 - 2.2. fulfillment of other prerequisites, which enable avoidance of serving legal training,
3. conducting verification of knowledge and practical skills of a candidate (taking an advocate's exam).

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I. EDUCATION OF A CANDIDATE FOR ADVOCATE

Education of a candidate for advocate is one of the most important prerequisites which speaks for making an entry into the list of lawyers. Legal regulations in all discussed systems set requirements of graduation from university with a degree in law by a person who wants to perform the profession of advocate. It should be noted that such obvious, in present point of view, requirement was not always set in obligatory form by law in these states. It is an interesting fact that enables making an entry into the list of lawyers for people who did not graduate from university with a degree in law, as historical experience shows, was inherent in non-democratic states. For example, in the Soviet Union, in some cases People's Commissioner of the Justice in each of republics could give a permit for performing a profession of advocate to people, who were not members of Advocate's Council. Consequently, based on recommendation given by local authorities, to perform the profession of advocate were allowed teachers, doctors and other representatives of intelligentsia². Regulations which facilitated performance of the profession of advocate by people who did not graduate from university with a degree in law, existed also in the post-war years in the People's Republic of Poland³.

² Святоцький О.А., Міхесенко М.М., Адвокатура України, Київ 1997, с. 45. Look also: Rules of advocacy in Soviet Union of 25 July 1962 (*Закон РСФСР от 25 июля 1962 г.*, «Вестности Верховного Совета РСФСР», 1962, № 28, с. 450); Rules of advocacy in Ukrainian Socialist Soviet Republic of 25 September 1962 (*Указ Президиума Верховного Совета УССР от 25 сентября 1962 г.*, «Вестности Верховного Совета УССР», 1962, № 39, с. 494); Rules of advocacy in Belarus Socialist Soviet Republic of 15 July 1961 (*Закон БССР от 15 июля 1961 г.*, «Вестности Верховного Совета БССР», 1961, № 19, с. 186).

³ See: Decree of the Council of Ministers approved by Presidium of the National People's Council with the strength of the Law of 22 January 1946 about exceptional admission to accession to offices of the judges, public prosecutors and notary publics and also to make an entry into roll of lawyers. Journal of Laws of 1946 No 4, item 33.

EDUCATION OF CANDIDATE FOR ADVOCATE IN POLISH LAW

Graduation from university with a degree in law, according to article 65 of Polish Law on the Bar, is one of prerequisites of entry into the list of lawyers. In present wording of this provision this prerequisite is "graduate from university with a degree in law in Republic of Poland or foreign legal studies which are recognized in the Republic of Poland". The Law on Higher Education of 27 July 2005, distinguishes three levels of university studies: studies of the first level – license studies or engineering studies; studies of the second level – Master studies; studies of the third level – doctor studies⁴. According to § 2 of Regulation of a Minister of Science and Higher Education of 13 June 2006 concerning names of direction of the studies⁵, direction of the studies "the law" is held as uniform Master studies⁶. But course of recognition of foreign studies is regulated by Regulation of a Minister of Education concerning validation of a foreign diploma⁷.

⁴ Law on Higher Education of 27 July 2005, Journal of Laws of 2005 No 164, item 1365.

⁵ Regulation of a Minister of Science and Higher Education of 13 June 2006 concerning names of direction of the studies, Journal of Laws of 2006 No 121, item 838.

⁶ More about legal education look: Korybski Andrzej, In the issue of studies in legal education - some comments and reflections, [in:] In the circle of problem of the power, the state and the law. The jubilee book in 70 anniversary of the birth of Professor Henryk Groszyk, Lublin 1996, Publisher UMCS, pp. 109-114.

⁷ Regulation of a Minister of Education concerning validation of a foreign diploma of 24 February 2006, Journal of Laws of 2006 No 37, item 255. According to this legal act (§ 1), validation of a foreign diploma is made by: 1) council of organizational unit of university which is entitled to grant a degree of a doctor of determined sphere of the science or sphere of the art and science and art disciplines which correspond to the direction of studies which are confirmed by foreign diploma; 2) in the case of diploma of interdisciplinary studies which are held in Republic of Poland – council of organizational unit of university which is nominated by the president as leading, in agreement with the councils of one or more universities, with whom hold common interdisciplinary studies, which correspond to the studies which were confirmed by foreign diploma; 3) in the case of diploma of interdisciplinary studies which are not held in Republic of Poland – council of organizational unit of university which is nominated as competent by the senate of

Requirement of graduation from university with a degree in law by the candidates for advocate was specified in Polish judicial decisions, but only in scope concerning comparability of legal studies and administrative studies and also studies on Faculty of Canon Law of Catholic Theology Academy. The Supreme Administrative Court in its judgments realized that graduation from university in Faculty of Law and Administration in field of administration and having degree of Master of Administration (not Master of Law), and also graduation from university in Faculty of Canon Law of Catholic Theology Academy cannot be recognized as fulfillment of a requirement of graduation from university with a degree in law⁸.

EDUCATION OF CANDIDATES FOR ADVOCATE IN UKRAINIAN LAW

According to article 2 of the Ukrainian Law on the Bar, one of prerequisites which enables entry into the list of lawyers, is graduation from university with a degree in law confirmed by a diploma obtained in Ukraine or foreign diploma according to international conventions of Ukraine.

Gaining an advanced education, also legal education, in Ukrainian law is regulated by the Act on the Advanced Education⁹. The act provides the following educational and qualified levels of education in advanced education: younger expert; Bachelor; expert, Master (article 6). Appropriately, people who graduated according to one of these levels of education are issued diplomas: diploma of younger expert; diploma of Bachelor; diploma of expert; diploma of Master. Article 24 of the Act on the Advanced Education provides four levels of

university which hold studies on directions connected with interdisciplinary studies, which is confirmed by foreign diploma.

⁸ Look into judgments of the Supreme Administrative Court of 1983.11.07 II SA 1558/83 ONSA 1983/2/97; of 1992.01.08 II SA 928/91 ONSA 1992/3-4/75; of 1991.02.18 II SA 80/91 ONSA 1991/2/36; of 1996.02.20 II SA 79/95, ONSA 1997, No 2, item 62.

⁹ Закон України „Про вищу освіту” від 17 січня 2002 р. (з наступними змінами), „Відомості Верховної Ради”, 2002, № 20 с. 134.

accreditation of universities: I – a university, which holds education on educational and qualified level of younger expert (e.g. technical school); II – a university, which holds education on educational and qualified level of Bachelor; III – a university which holds education on educational and qualified level of Bachelor, of expert, of Master; IV – a university, which holds education on educational and qualified level of Bachelor, of expert, of Master.

As we can see, Ukrainian Law on the Bar does not specify the criteria, according to which educational and qualified level a person should graduate and which diploma should obtain in order to be able to become an advocate. The Act determines imprecisely that they should be legal studies. This issue is regulated by the Procedure of taking qualification exam approved by the decision of the Higher Qualification Commission of the Ukrainian Bar from 1 October 1999 (with further changes). According to point 4, as a document confirming graduation from advanced legal education is considered a diploma of a university with 3-4 level of accreditation for specialty “jurisprudence” with mastering „specialist” or “master”¹⁰.

The act also imprecisely states the matter connected to a possibility of signing in on a list of advocates of a person, who did not graduate from law studies at Ukrainian universities, but gained advanced education abroad. The act uses term “advanced law studies confirmed by a diploma of another state due to international agreements of Ukraine”. If we use a logical – language interpretation of that norm, it turns out that it is a diploma of advanced law studies graduated abroad that should be accredited in Ukraine by the power of international agreements. So if the international agreement, which provides discretion or validation of a foreign diploma on Ukrainian territory, was drawn up by Ukraine, the person who graduated from advanced law studies in that country, fulfills a.m. prerequisite of signing up on a list of advocates.

¹⁰ Порядок складання кваліфікаційних іспитів в регіональних кваліфікаційно-дисциплінарних комісіях адвокатури, – затверджений Впштою кваліфікаційною комісією адвокатури України при Кабінеті Міністрів України, протокола від 01 жовтня 1999 р. № 6/2.

EDUCATION OF CANDIDATES FOR ADVOCATE IN BELARUSIAN LAW

Article 7 of the Belarusian Act on the Bar of 15 June 1993 as the basic prerequisite of the registration on the list of advocates mentions getting an advanced legal education.¹¹ According to article 32 of the Belarusian act on education of 29 October 1991 system of education provides two degrees : bachelor and master.

Universities are institutions that provide higher education: classic university, specialist university (academy), institute and higher college. Classic university, specialist university (academy) and institute gives the degrees of bachelor and master whereas in higher college are only held the studies which terminate with getting a degree of bachelor.¹² Law studies in Belarus are conducted according to those two mentioned grades. Law studies which terminates with getting a diploma of bachelor lasts for four years and of master- five years.

The issue of gaining advanced education in Belarus is more minutely developed in the Rules on the grades of advanced education approved by resolution of the Council of Ministers of the Belarusian Republic of 14 October 2002.

EDUCATION OF CANDIDATES FOR ADVOCATE IN RUSSIAN LAW

According to article 9 of the Federal Act on advocate's activity and the Bar in Russian Federation of 26 April 2002 (Act FR)¹³ on the list of advocates in Russian Federation can be signed a person who has an advanced legal education, gained at university which has an accreditation of state or who has a degree in the legal discipline.

¹¹ Закон Республики Беларусь об адвокатуре от 15 июня 1993 г. „Ведомости Верховного Совета Республики Беларусь”, 1993, № 20, с. 242.

¹² Закон Республики Беларусь об образовании от 29 октября 1991 г. „Ведомости Верховного Совета Республики Беларусь”, 1991, № 33, с.598.

¹³ Положение о ступенях высшего образования, утвержденное Постановлением Совета министров Республики Беларусь от 14 октября 2002 г. „Национальный Регестр Правовых актов Республики Беларусь», 2002, № 118, с. 5.

The requirement of having an advanced legal education existed in Russia before passing of a new Act on the Bar in 2002. However there is a new regulation of the possibility of access to the profession of advocate by a person, who does not have advanced legal education but a degree in a legal discipline.

According to the Federal Act on advanced education and post-graduate professional education of 22 August 1996¹⁴ in Russian Federation there are being introduced the following degrees of advanced professional education: bachelor, certified specialist, and master. According to that act, the degree of bachelor is enough to fulfill the requirement of having an advanced legal education as a prerequisite of access to the profession of advocate. Bachelor studies lasts for four years. Master and certified specialist studies lasts for five years. However so far the legal education in practice does not accept the education on bachelor's level. That situation will change when Russia enters the *Bologna process*. Then it results from the time of the start of this regulation qualification commissions will face the problem of access to taking advocates exam by people who have the degree of bachelor. What is more, as a guarantee of preservation of high educational level of advocates, the need of making changes in the act FR that only a person who have terminated advanced law studies, is being considered¹⁵.

As the alternative to advanced legal education Act FR mentions having a degree of legal discipline. Act FR does not give details about that prerequisite.¹⁶ Adequate regulation consists in the Resolution of the Government of the Russian Federation of 30 January 2002 No 74 about resolution the only register of academic degrees and the pro-

¹⁴ Федеральный Закон «Об адвокатской деятельности и адвокатуре в Российской Федерации». Принят Государственной Думой 26 апреля 2002 года. Одобрен Советом Федерации 15 мая 2002 года, «Адвокат», 2002, № 7, с. 15.

¹⁵ Мельниченко Р.Г., О принципах формирования адвокатской корпорации в России, «Адвокат», 2004, № 9, с. 10.

¹⁶ Обзор практики Министерства юстиции и его территориальных органов по реализации положений Федерального закона от 31.05.2002 г. «Об адвокатской деятельности и адвокатуре в Российской Федерации» в 2002 г., «Адвокатская практика», 2004, № 1, с. 8.

cedure of giving academic degrees¹⁷. Equalization by legislative degree in law and advanced legal education causes controversy, because for giving a degree in law it is not necessary to have an advanced legal education. For access to a defense of candidate's dissertation it is necessary to take candidate's exams including exams containing 3-4 branches of law. As a result of it a person gets a degree of candidate of law after passing an exam of 3-4 branches of law, unlike the graduates of university -- after passing several dozen of them. It comes out of that, that level of knowledge of such persons is incomparable. That is why some of the authors in Russia claim that basic advanced legal education should be an essential prerequisite of signing up on a list of advocates.¹⁸

¹⁷ Постановление Правительства Российской Федерации от 30 января 2002 г. № 74 „Об утверждении Единого реестра ученых степеней и ученых званий и Положения о порядке присуждения ученых степеней». According to that act, the degree of candidate and doctor of proper disciplines of knowledge is being established. Degree of doctor is given by Presidium of Higher Attestation Commission of Ministry of Education of Russian Federation on the basis of application of dissertational council. However degree of candidate is given by dissertational council. The practice shows that as a rule candidates and doctors of law who are applying for admission to advocates' corporation has advanced law education. It comes out of that, that in article 9 of Act FR It is said about the rare situation, when a person having a law degree does not have an advanced legal education. From act FR it comes out that people who have law degree are pretending to a profession of advocate on general rules and legislation does not provides any facilities. It means that this category of individual should take the advocate's exam on the general rules. So such a solution is not totally logical, because those people were considered specialists of higher legal qualification. How some of the authors claim, regulation according to which advocate's exam for people who have degree in law would differ with some rarities: for example limitation to writing a paper.: Самойлов А.С., *О некоторых вопросах применения ст. 9 ФЗ «Об адвокатской деятельности и адвокатуре в Российской Федерации»*, «Адвокатская практика», 2003, № 6, с. 3. Вадрич А.Н., *Образование как условие приобретения статуса адвоката*, «Адвокатская практика», 2004, № 5, с. 9-10.

¹⁸ *Ibidem*, p. 9-10

2. PRACTICAL PREPARATION FOR PERFORMANCE OF THE LEGAL PROFESSION

2.1. COMPLETING ADVOCATE'S APPRENTICESHIP

Advocate's apprenticeship in Polish law

The advocate's apprenticeship is delineated in section 7 of the Act on the Bar of 26 May 1982¹⁹.

Recruitment on advocate's apprenticeship is held as a competitive examination. In Poland every person who fulfills the following conditions can be an advocate's apprentice: 1) is of flawless character and his previous behavior gives warranty of performing the duties of apprentice properly; 2) has full public rights and full capacity to undertake legal transactions; 3) graduated from law at a university in Poland and gained master's degree or graduated from law abroad an the degree that is accredited in Poland; 4) got positive mark on final competitive exam.

In Polish law it was traditionally settled for decades that recruitment on advocate's apprenticeship is conducted by the organs of advocate's self-government. This state of matters has changed in recent years, the changes made on the basis of the decision of the Constitutional Tribunal from 18 February 2004, and then on the power of the Act of 30 June 2005 that changed the law on the Bar and some other acts.

In its sentence from 18 February 2004 the Constitutional Tribunal ruled about the discrepancy with the constitution of the norms from the Act on the Bar regarding the statement of the advocate's council about the minimum and maximum amount of the members of advocate's chamber and regulations regarding resting the proclamation of regulations concerning the rules of conducting the com-

¹⁹ Act of 26 May 1982 – Law on the Bar (Dz.U. 82.16.124) with further changes.

petitive examination for advocate's apprentices in the competence of the supreme Advocate's Council.²⁰

Registration on the list of advocate's apprentice takes place after conducting a competitive examination on the basis of resolution of the proper territorial advocate's council. Competitive examination is conducted by examining commissions for the matter of advocate's apprenticeship by The Minister of Justice, called into being on the proper territory for one or a few territorial advocate's council (forward – commission). The Minister of Justice is a superior organ towards these commissions.²¹

²⁰ Ruling in this way, the Constitutional Tribunal concluded the following: 1) the regulation of the act – Law on the Bar is unconstitutional, because as a result of not indicating legal prerequisites for estimating the maximum number of advocate's apprentices it leaves too much discretion in limiting constitutional freedom and performing the profession and choosing the place of work; 2) Constitutional Tribunal takes the position that the number of chamber's members (also the apprentices) can be limited by the organs of advocate's self government, but under a condition, that it would be proceeded on the basis of legal prerequisites of such limitation; 3) about the termination of rules, the procedure of conducting a competitive examination on advocate's and solicitor's apprentices can not decide the organs of advocate's or solicitor's self governments. This thesis comes out of the explanation consisting in that: rights and freedoms can be limited only in cases enumerated in article 31 paragraph 3 of the Polish Constitution and only on the basis of generally binding law, – and the acts of organs of legal corporations are not such law; 4) at the same time the Tribunal in an unambiguous way said, that the fact that corporations of advocates and barristers can not set the rules and procedure on recruitment on apprenticeship and performing a apprenticeship, it does not mean that the organs of professional self government can not conduct recruitment on apprenticeship, organize the performance of apprenticeship according to the rules and procedure set by the rules of generally applicable law; 5) the Tribunal takes the position that for the profession of public confidence (in this case – profession of advocate and solicitor) there should be provided a comparable status in the range of recruitment to the profession. (Decision of the Constitutional Tribunal from 18 February 2004 (P 21/02; OTK-A 2004/219).

²¹ The commission consists of seven members: 1) three representatives of the Minister of Justice ; a representative of the Minister of Justice can be as well, after his assent, judge or retired judge; 2) two representatives delegated by The Superior Advocate's Council; 3) one research worker, research – didactic or didactic employee at law faculty at university in Poland or employee of Polish Academy of Sciences

A competitive examination consists in checking the knowledge of law of candidates for advocate: constitutional law, penal law, law of criminal proceedings, penal revenue law, petty offences' law, civil law, law of civil procedure, economic law, company law, labor and social security law and family and custodial law, administrative law, law of administrative procedure, financial law, European law, law of organization of courts, law of advocate's self government and other organ self legal protection that function in Poland and also the conditions of performing a profession of advocate and ethics of that profession.

Advocate's apprenticeship lasts for 3 years and 6 months and for at least 6 months it takes place in a court, prosecutor's office, notary's office or other public institution on the basis of committal of the territorial advocate's council. Advocate's apprentice performs apprenticeship under the guidance of a patron appointed by the dean of a territorial advocate's council. The task of a dean is to prepare advocate's apprentice to perform the profession of lawyer.

Advocate's apprenticeship in Ukrainian law

Article 8 of the Act on the Bar of 19 December 1992²² says that advocates can have one or more apprentices. Advocate's apprentice can be a person, who graduated law from a university. A person who works in the court, prosecutor's office, public notary's office, organs of Ministry of the Interior, organs of the security service, or governmental administration cannot be an advocate's apprentice. Advocate's apprentice cannot be a person convicted of a crime.

The act does not specify what kind of advanced education should the candidate for advocate's apprentice have. This matter is solved by the Explanations of Higher Qualification Commission of the Bar of

who have at least a degree of senior doctor of law; 4) prosecutor who is a prosecutor appointed at least on the position of a prosecutor of the Regional Public Prosecutor's Office, also retired prosecutor. Members of the commission- representatives of Minister of Justice and also research workers cannot be advocates. Minister of Justice appoints the chairman of commission from his representatives. Terms lasts for 2 years.

²² Закон України «Про адвокатуру» від 19 грудня 1992 р., «Відомості Верховної Ради України» 1993, № 9.

18 February 2005, no IV/9-2, according to which advocate's apprentice can become a person, who has advanced legal education with degree of "bachelor" in the discipline of "jurisprudence".

About the fact who will be an advocate's apprentice decides the advocate himself. As a rule it lasts for 2 years, because after the termination of that period, apprentice has the right to take the advocate's exam. There are no specific legal regulations about performing apprenticeship, it is only in the hands of patron or the advocate's association (if the apprentice is performing apprenticeship in association, not in the advocate's office)²³. Advocate's apprentice, besides performing the duties of apprentice, can work in other work places.²⁴

Although the Ukrainian Law on the Bar does not provide (legal regulations are constructed that way), that advocate's apprentice from the beginning of apprenticeship has the right to perform as a agent for litigation in the civil, economic, administrative procedure and as a counsel for the civil defense (plaintiff) in penal procedure. Such possibility is given to the apprentice by article 112 of Ukrainian Civil Procedure Code²⁵, article 28 of Ukrainian Code of Economic Procedure²⁶, article 54 of Ukrainian Code of Judicial-Administrative Procedure²⁷ and article 28 of Ukrainian Code of Penal Proceedings²⁸ , which states that the agent for litigation can be an advocate or other person.

²³ Роз'яснення Вищої кваліфікаційної комісії адвокатури від 18 лютого 2005 р. Про можливість укладення контракту на виконання обов'язків помічника адвоката з особами , які мають вищу юридичну освіту за освітньо-кваліфікаційним рівнем «бакалавр» за спеціальністю «правознавство», «Адвокат», 2003, №3.

²⁴ Рог: Т. Варфоломєєва , С. Гончаренко, Науково-практичний коментар до Закону України «Про адвокатуру». Законодавство про адвокатуру та адвокатську діяльність, Київ, 2003, с. 45-47.

²⁵ Рішення Вищої кваліфікаційної комісії адвокатури України від 22 жовтня 2004 р., «Архів Вищої кваліфікаційної комісії адвокатури України», Т. IV, пов. 7-4-1.

²⁶ Цивільний процесуальний кодекс України, Київ 2001, с. 128.

²⁷ Господарський процесуальний кодекс України, Київ 2001, с. 64.

²⁸ Кодекс адміністративного судочинства України, Київ 2005, ст. 35

Advocate's apprenticeship in Belarusian law

According to article 8 of the the Act of the Republic of Belarus on the Bar of 15 June 1993 (hereafter- Act RB)²⁹, people, who graduated from advanced law studies and do not have 3 years of experience in a legal profession, perform advocate's apprenticeship in the period from 6 months to one year. The act forbids apprentices performing a public service, in social or other organizations, besides performing research or pedagogic work.

More particularly the procedure of performing advocate's apprenticeship is regulated in The Rules of Apprenticeship in the Bar of 30 June 1999 (hereafter – The Rules of Apprenticeship RB)³⁰. The basic aim of advocate's apprenticeship according to The Rules of Apprenticeship RB is learning the specifics of performing the work of the Bar, deepening professional specialization, and mastering gained experience. During the apprenticeship the data characterizing the usefulness of an apprentice to perform the advocate's profession, particularly professional, ethical and data characterizing his character.

The decision of signing in on the apprentices' list is made by the territorial presidium of the Minsk Municipal Committee of Advocates every year from 1 July to 1 September. In the region that lacks in advocates, the registration on the list is being made according to need.

According to the point 1.2 the advocate's apprenticeship is performed by people, who graduated from law at university and do not have 3 years of experience in a legal profession. This legal regulation provides also negative prerequisites of registration on the list of advocate's apprentices. An individual cannot become an advocate's apprentice who: is partly or entirely incapacitated, committed a deliberate crime, towards whom the decision of annulment of license to perform advocate's activity or deletion from the list of members from advocate's committee was made and also the decision about redundancy

²⁹ Закон Республікі Беларусь аб адвакатуры ад 15 чэрвеня 1993 г., «Веды-мостві Верховнаго Савета Республікі Беларусь», 1993, № 20, с. 242.

³⁰ Закон Республікі Беларусь аб адвакатуры ад 15 чэрвеня 1993 г., «Веды-мостві Верховнаго Савета Республікі Беларусь», 1993, № 20, с. 242.

from organs of legal security and other organs, because of the reasons which do not give warranty of proper performance of profession – in the period of 5 years from the day of the resolution of adequate decision, if the legal acts do not provide otherwise.

The time of application is set every time in particular cases and lasts from 6 months to 1 year. The terms and issues related to remuneration for apprentice's work are established on the basis of a decision of the general meeting (conference) of the committee of advocates in accordance with the statutes of the committee.

Apprenticeship terminates with taking the advocate's exam.

The management of performing apprenticeships is by territorial presidiums of the Minsk Municipal Committee of Advocates, managers of the legal aid centers and managers of apprenticeships (patrons³¹). Individual plans for performing an apprenticeship are approved by the chairman of the presidium of advocates or his deputy.

The manager of apprenticeship (patron) is designated by the presidium of the committee. Patronage over the apprenticeship can be held by a person professionally competent, having at least 5 years of experience in performing the profession of advocate (point 2.6. of The Rules of Apprenticeship RB).

The Presidium of Committees of Advocates from the whole county not later than 7 days before the meeting of Qualification Commission in the Matters of Advocate's Activity in the Republic of Belarus submits information on apprentices to the Republican Committee, whom they recommend.

According to the point 3.1. of The Rules of Apprenticeship RB, during performing the apprenticeship, advocate's apprentice comes under the regulations of the act on Bar, the rules of advocate's professional ethics, the statute of committee of advocates. He is also entitled to all the social benefits on an equal basis as for advocates.

Advocate's apprenticeship in Russian law

³¹ We use the word „patron” to define a manager of advocate's application in Belarus. However in Belarusian legal language this term is not used. The term “manager of advocate's apprenticeship” is used (ros. – руководитель стажировки).

To the advocate's apprenticeship article 28 of The FR Act is devoted. An apprentice can be a person, who graduated from law at a university. A person cannot become an advocate's apprentice who is entirely incapacitated or limited in capacity to undertake legal transactions in the procedure established by the legislation of the Russian Federation or a person who has indelible conviction for a deliberate crime.

Apprenticeship lasts from 1 year to 2 years. Custodian³² of an apprentice can become an advocate who has at least 5 years of experience in the profession of advocate. The number of apprentices who can be trained by one patron is not legally limited. Advocate's apprentice fulfils the distinct orders of advocate under his supervision. A duty of obeying the advocate's secret is extended to the apprentice. During performance of apprenticeship on advocate's apprentice the rules of advocate's ethics are expanded.

A criteria indicating that the person is a apprentice is his engagement on the position of apprentice on the basis of the labor contract. Advocate's apprentice is employed on the basis of labor contract with the advocate's team or, in the case when advocate conducts his activity in advocate's office – with the advocate. So the decision of acceptance of a person to the group of apprentices depends only on the employee – the advocate or the advocate's team. Russian law does not provide the requirement of taking exam by the apprentice or other check in order to be admitted to apprenticeship. However such requirements can be created from their own initiative by a particular advocate's offices or teams who intend to employ a person on the position of apprentice.

The act states a requirement that advocate's apprentice should be employed by the advocate (his office) or the advocates' team in which he performs an apprenticeship. The fact of employment indicates, that the person has the status of apprentice and after terminating the apprenticeship will be able to take the advocate's exam.

³² In Russia for the aim of defining a patron taking charge over apprentice the term "custodian" is used.

A person who becomes an advocate can have experience in the legal profession but also cannot. The FR Act gives advocate's apprenticeship a certain priority in comparison to other candidates to sign on the advocates' list: what was mentioned, apprentice can take an advocate's exam after a year of apprenticeship and then, as the other people who are not apprentices, should have at least 2 years of experience in a legal profession³³.

Some authors think that the regulation of the act, which states that "advocate can have apprentices" is erroneous, emphasizing that in the first place state and the Bar and than the advocate himself are responsible for preparation of the advocate-to-be. That is why the argument is advanced, that introducing the changes to that regulation of The FR Act, which would provide the law of the advocate's chamber (not the law of advocate) to assign particular advocates for the patrons of apprentices.³⁴

More precisely the procedure of performing the apprenticeship is discussed in the Model Rules of advocate's apprentice and the procedure of performing the apprenticeship.³⁵ Taking into consideration

³³ Such a solution comes out of the fact, that during the advocate's apprenticeship apprentice has to do with advocate's practice, follows the orders of advocate-patron, which gives him the possibility to gain some abilities used later in an independent advocate's activity. Иванов С.П. *О некоторых формах законодательства об адвокатской деятельности и адвокатуре*, «Адвокат», 2001, № 1, с. 16

³⁴ Тугушев Р. И. *В Законе об адвокатуре необходимы продуманные поправки*, «Адвокат», 2004, № 7, с. 37.

³⁵ According to point 12 of the Rules, apprentice Has the right to gain documents necessary for the patron, get acknowledged of dossiers of the cases in courts, investigating organs, other organs and organizations, do the abstracts and copies, together with the patron take part in sittings of the court, investigating activities, do the projects of legal documents, do other activities which are not forbidden by the law. It is forbidden for apprentice to conduct independently the cases during investigation, inquiry or in courts. He can only, on the basis of substitution of his patron, represent businesses of a client (and of his assent) in other state organs and other institutions. *Примерное Положение о стажере адвоката и порядке прохождения стажировки*, «Адвокат», 2003, № 11, с. 9-10. Those Model Rules about advocate's apprentice and the procedure of performing apprenticeship are elaborated by Federal Advocate's Chamber and have recommendational character.

that status of apprentice is based on the labor relationship between advocate's office or advocates team, termination of the labor agreement is equivalent to the loss of the status of advocate's apprentice.

2.2. FULFILLMENT OF THE OTHER PREREQUISITES ENABLING THE AVOIDANCE OF PERFORMING THE APPRENTICESHIP

Exemption from the requirement of performing apprenticeships

Among all the legal systems that are the subject of research of this elaboration, the term "exemption from the requirement of performing apprenticeship" functions only in the Polish system. It comes out of the tradition, due to which from a few decades the regulations of Polish law on the Bar in the obligatory way states that on the list of advocates can be signed a person, who performed advocate's apprenticeship. And the only exception is that some categories of people can be excused from that duty. However in Ukrainian, Belarusian and Russian law there is an alternative to the advocate's apprenticeship – the requirement of having experience in a legal profession by the candidate to be signed up on a list of advocates.

The regulations of Polish law on the Bar concerning establishing the circle of people exempt from the requirement of performing advocate's apprenticeship are strongly evolving in the past few years⁴⁶. Nowadays in the face of the sentence of the Constitutional Tribunal from 19 April 2006, the requirement of performing the advocate's ap-

⁴⁶ To 30 June 2005 (resolution of the act on the change of act - The law on the Bar and some other acts), the act - the law on the Bar consisted one norm, which was exempting from requirement of performing advocates apprenticeship and taking advocate's exam of the following categories of people: 1) professors and senior doctors of legal studies, 2) people, who were judges, prosecutors or notaries for at least 3 years, 3) people, who having qualifications of judges, prosecutors or notaries or performed the profession of a solicitor, 4) people who performed a solicitor's application provided by the regulations on solicitors and took the solicitor's exam or at least for 3 years performed the profession of solicitor. The regulations that would exempt only from the requirement of performing advocate's apprenticeship is not provided by the act.

apprenticeship and taking advocate's exam does not apply to: 1) professors and senior doctors of legal studies, 2) people who passed judicial, prosecutorial, solicitorial or notarial exam, 3) people, who at least for 3 years were working as a solicitor of The General Public Prosecutor's Office of Treasury. However the requirement of performing apprenticeship does not comply to: 1) senior doctors of law, 2) people who at least for 5 years during the period not longer than 8 years, were performing the profession of referee or judge's assistant. Exemption from the requirement of performing apprenticeship entitles the individual to take the advocate's exam.

Experience in a legal profession as an alternative to the advocate's apprenticeship

As has been mentioned, experience in a legal profession as an alternative to advocate's apprenticeship is provided by the proper regulations in Ukrainian, Belarusian and Russian law.

According to article 2 of the Ukrainian act on the Bar, an advocate can be a person, who at least for 2 years was performing a legal profession³⁷. The previous version of that article, which functioned from the day of coming of the act on the Bar into force in 1992 and to its change by the power of the act from 16 November 2006, provided that on the list of advocates can be signed a person who for at least 2 years was performing the profession of lawyer or advocate's apprentice. From the new redaction of the a.m. regulation of Ukrainian act on the Bar comes out, that the term "performance of the profession of the advocate's apprentice" was included in the term "performance of the legal profession". The act itself does not specify performance of which legal professions is a fulfillment of the prerequisite of registration on the list of advocates. This issue, in a more precise way, is developed by interpretation and legal acts of the Higher Qualification Commission of the Bar.

Thus, the basic assumption, on which the interpretation of the Higher Qualification Commission of the Bar is based, is that the le-

³⁷ Закон України «Про внесення змін до Закону України «Про адвокатуру» від 16 листопада 2006 р., «Офіційний Вісник України», 2006, № 49, с. 3238.

gal prerequisite of registration on the list of advocates, “performance of a legal profession” is fulfilled by the candidate, when he worked on the basis of a labor agreement on the position, which requires advanced legal education. Specifically, “performing legal profession” is considered performing the profession of judge, prosecutor, investigator, solicitor, or notary. Into the seniority the period of working in the legal profession after graduating from a law university and getting a degree not lower than bachelor is credited³⁸.

For example the Higher Qualification Commission of the Bar in it’s verdict of 3 September 2004 came to the conclusion, that a person, who graduated from law university and performed for 2 years a profession of a bailiff³⁹ does not fulfill the prerequisite to be signed up on the list of advocates, because the act on public executorial service (on bailiffs) does not requires graduating from law at university to be a bailiff, but terminating advanced legal education, which should not necessarily mean having a degree.⁴⁰ The Higher Qualification Commission of the Bar reached a similar conclusion in it’s verdict of 18 February 2005, stating that to perform the duties of a police officer, other organs of the Ministry of the Interior, security service, border guard can be admitted as the fulfillment of the requirement of performing a legal profession only when the legal regulations requires holding a position, on which the candidate worked, only by people, who graduated from law at a university⁴¹.

³⁸ Порядок складання кваліфікаційних іспитів у регіональних кваліфікаційно-дисциплінарних комісіях адвокатури, затвердженій Вищою кваліфікаційною комісією адвокатури України при Кабінеті Міністрів України, протокол від 01 жовтня 1999 р. № 6/2, п. 4.

³⁹ In Ukrainian law for defining a term „bailiff”, the term “public executor” is used (ukr. – „державний виконавець”).

⁴⁰ Роз’яснення Вищої кваліфікаційної комісії адвокатури України при Кабінеті Міністрів України, № 1/4 від 03 вересня 2004 р., „Архів Вищої кваліфікаційної комісії адвокатури України”, Т. IV, поз. 6-5-6.

⁴¹ Роз’яснення Вищої кваліфікаційної комісії адвокатури України при Кабінеті Міністрів України, від 18 лютого 2005 р., „Архів Вищої кваліфікаційної комісії адвокатури України”, Т. IV, поз. 9-2-2.

Interpretation of the Higher Qualification Commission of the Bar, regarding to the fulfillment of the requirement of performing a legal profession by a person, pursuing economic activity which consists in providing legal services should next be considered. The Commission in its verdict of 3 September 2004 came to the conclusion, that such people can not take an advocate's exam, because none of the legal regulations requires from people pursuing economic activity, which consists in providing legal services, having a degree in law from a university. Sustaining such position in it's next verdict of 18 February 2005, the Commission in a more elastic way said, that people pursuing economic activity, which consists in providing legal services, as a rule can not take advocate's exam, because none of the legal regulations requires from people pursuing economic activity, which consists in providing legal services, having degree in law at university. However, if the sufficient and objective data showing, that individual enterprising legal practice of a person had permanent character and such person submitted to the qualification-disciplinary commission proves of transferring taxes for such activity, legal documents, case files, in such a situation there is a possibility of considering, that such a person fulfills the requirement of performing a legal profession according to the act on the Bar.

According to article 9 of the RB Act, an advocate can be a person, who is a citizen of the Republic of Belarus, who has professional experience as a lawyer for at least 3 years or who does not have such experience, but performed an advocate's apprenticeship in the period from 6 months to 1 year.

Article 9 of the Russian act on the Bar provides, that on the list of advocates in the Russian Federation can be signed only a person who fulfills among other requirements, also the requirement of having at least 2 years of experience in a legal profession or performing advocate's apprenticeship in the advocates' teams in the terms determined by the law.⁴²

⁴² How the norm provides, to the Professional experience in a legal profession required for the registration on a list of advocates, performing a profession of judge, notary, advocate, advocate's assistant, public positions in federal state organs re-

The issue of professional experience as the requirement credited by registration on a list of advocates is not entirely unambiguously regulated in the FR act, because the act, establishing, that “for the experience in a legal profession, required for registration on a list of advocates, the employment on a position requiring advanced legal education, is credited”, does not specify how should be established the requirement of employment on the specific position only by the people who have advanced legal education. Other legislation does not specify this issue.⁴³ It comes out of that, that as the seniority in a legal profession necessary for access to the profession of advocate, credits the seniority on the position for example legal advisor of every institution, if only of the interior documentation indicates, that for the work on that position it is necessary to have advanced legal education.⁴⁴ To the experience in a legal profession, required for the registration on a list of advocates, credits also the employment on the position of advocate’s assistant.

quiring advanced legal education, public organs of the public subjects of Russian Federation or other public organs; on requiring advanced legal education positions which existed before resolution of the active Constitution Russian Federation in the public organs of Soviet Union, Russian Socialist Federal Soviet Republic and Russian Federation situate on the territory of the Russian Federation; on requiring having advanced legal education on the positions in the public organs of territorial self-government; on requiring having advanced legal education on the positions in the organs of the Judicial Department by the Supreme Court of Russian Federation; on requiring having advanced legal education on the positions in organizations providing legal aid services; on requiring having advanced legal education on the positions in the research institutes; on the position of lecturer of law subjects in the medium professional and postgraduate educational establishment.

⁴³ Исаилов С.Н. О некоторых нормах законодательства об адвокатской деятельности и адвокатуре, «Адвокат», 2004, № 1, с. 13.

⁴⁴ Мельниченко Р.Г., О принципах формирования адвокатской корпорации в России, «Адвокат», 2004, № 2, с. 11.

3. TAKING THE ADVOCATE'S EXAM

Taking the advocate's exam. Polish regulation

An advocate's exam can be taken by a person, who performed advocate's apprenticeship and has certification of that performance. The exceptions from this rule are established in article 66 of the act on the Bar, in accordance to which, without the requirement of performing advocate's apprenticeship, the exam can be taken by: 1) doctors of law, and 2) people who worked for at least 5 years in the period not longer than 8 years on a position of judicial referee or the assistant of the judge. The requirement of performing an advocate's apprenticeship and taking advocate's exam does not apply to: 1) professors and senior doctors of law; 2) people who passed judicial, prosecutor's, solicitor's or notary's exam (this regulation has no application in practice)⁴⁵; 3) people, who for at least 3 years were working on a position of advisor of the General Public Prosecutor's Office of Public Treasury.

Traditionally in Poland to 2005 it was settled, that advocate's exam is administered by organs of territorial self-government, by the commissions formed by district advocate's councils.⁴⁶ But in recent years legal regulations in that area were basically changed. By the power of the Act of 30 June 2005 on the change of the act- the law on the Bar and some other acts, competences regarding administering the advocate's exam was passed from the advocate's councils to the special examination commissions formed by the Ministry of Justice. In such commissions 2 out of 7 members are advocates. The other members of commission were: 3 representatives of the Minister of justice, one

⁴⁵ On 45 May 2006 article 66 ust. 1 pkt 2, in the shape given by article 1 pkt 7 (iii a) of the act from 30 June 2005 on the change of the act- the law on the Bar and some other acts (Dz.U.05.163.1361) in the range, in which it creates a possibility of permitting to perform a profession of advocate people, who after taking advocate's exam do not have substantial practice in a legal profession, was considered inconsistent with article 17 ust.1 of Polish Constitution by the sentence of Constitutional Tribunal from 19 April 2006 (Dz.U.06.75.529).

⁴⁶ Zdzisław Krzemiński „The law on the Bar: comment, Warsaw 1998, p. 143-144)

research worker and one prosecutor. The chairman of the commission was appointed by the Minister of justice from his representatives. Taking under consideration, that prosecutor's office is a part of the Ministry of Justice department, it can be certainly stated, that in those commissions the crucial voice was always to the representatives of the Minister of justice. However such state of matters did not last long. The Supreme Advocate's Council, using its right, petitioned the Constitutional Tribunal for checking the agreement of the Constitution with the Act of 30 June 2005 on the change of the act- the law on the Bar and some other acts.

Constitutional Tribunal in it's decision of 19 April 2006 regarded some of the regulations of the challenged act as unconstitutional, especially also those considering the *make-up of the commission formed to pursue advocate's exam.*

Finding unconstitutional the regulations of the amending act, which is a *complex of norms* regulating the rules of pursuing and the course of the advocate's exam, the Constitutional Tribunal, in a way of systemic interpretation, got to the conclusion, that advocate's exam (despite the changes in its course) did not lose the features of a professional exam, which justifies taking charge of it by advocate's self-government. It requires warranting to professional self-government proper participation in establishing the substantial range of the exam, and what is more- adequate representation of this self-government in the *make-up of the commission formed to administer the exam.*⁴⁷

So nowadays the issue of pursuing advocate's exam is not regulated, because the norm of act on the Bar, which gave such authorization to examinational commissions formed by the Minister of Justice, was annulled. At the same time the Constitutional Tribunal in its decision of 19 April 2006 stated, that "to the moment of coming the new regulations into effect, the procedure of pursuing advocate's exams should be conducted wholly on the basis of so far binding

⁴⁷ Sentence of the Constitutional Tribunal from 19 April 2006 K 6/06 "Jurisdiction of the Constitutional Tribunal" Official Assemblage, no 4 (88), 2006, p. 481-482.

regulations. It is necessary for the protection of “interests in action” of the participants of the procedure”.

Besides the resolution of the Constitutional Tribunal a.m. decision of 19 April 2006, the issue of resolution of the rules considering the procedure of taking the advocate’s exam and the issue of the make-up of the commission and the procedure of forming the examination commission, is still unregulated, but rules on the advocate’s exam are the following: Advocate’s exam consists in checking the legal preparation of the person preparing to the advocate’s exam, to individual and proper performance of the profession of an advocate, also the knowledge and abilities of its usage in practice in the branches of law: constitutional, penal, criminal proceedings, penal revenue, petty offence, civil, of civil procedure, economic, company, labor and social security, family and custodial, of advocate’s self-government and other organs of legal security in Poland, and also the conditions of performing the profession of an advocate and the ethics of this profession. Advocate’s exam consists of a written and oral part. Exam is pursued once a year, in the term indicated by the Minister of Justice, not later than 31 May. The written and oral part commences in the same time in the same days in Poland. The resolution of the commission on the positive result of advocate’s exam is a basis to pass a resolution on the registration on the list of advocates.

Taking the advocate’s exam. Ukrainian regulation

Taking an advocate’s exam is a necessary prerequisite for the registration on the list of advocates in Ukraine. The law does not provide the possibility of releasing some categories of people from this requirement, as it happens for example in Poland. Advocate’s exams are conducted by the examination chambers of the regional qualification-disciplinary commissions of the Bar, which are formed in each district and in the Autonomic Republic of Crimea, Kiev and Sevastopol.⁴⁸ The range of activities of qualification-disciplinary commissions of the Bar in the district consists of: making decisions on the

⁴⁸ Закон України «Про адвокатуру» від 19 грудня 1992 р., «Відомості Верховної Ради України» 1993, № 9.

registration on the list of advocates; instituting disciplinary proceedings against advocates. qualification-disciplinary commissions of the Bar in the district divides into Chambers: Examination Chamber and Disciplinary Chamber.

The examination Chamber consists of 11 members: 4 advocates, 4 judges and 1 representative of the district council and of the department of the Minister of Justice in the district by the department of Association of Ukrainian Advocates.⁴⁹ Advocates- the members of chambers of the qualification-disciplinary commissions of the Bar are chosen by the General Meeting (Conference) of advocates of the district, judges – the Conference of judges of the district, representative of the Association of Ukrainian Advocates- by the Meeting of the district of the Association of Ukrainian Advocates, the representatives of the council of district – by the proper council, representative of the department of the Minister of Justice in the district is appointed on the member of the Council by the Superior of the proper department of the Ministry of justice in the district.⁵⁰ Conducting the advocate's exam is regulated by the Procedure of checks of qualification in the regional qualification-disciplinary commissions of the Bar, approved by the decision of the Higher Qualification Commission of the Bar from 1 October 1999 (hereafter- 'The procedure of taking an exam')⁵¹.

The examination procedure consists of the following stages: 1) submitting an application by the candidate for permit to take the exam; 2) cognizance of the candidate's application by the examina-

⁴⁹ Not all the advocates are members of the Association of Ukrainian Advocates. It is a nongovernmental organization, to which the legislator guaranteed the representation in the make-up of the qualification-disciplinary commissions. See: the official website of the Association of Ukrainian Advocates <http://www.cav.org.ua>.

⁵⁰ Положення «Про кваліфікаційно-дисциплінарну комісію адвокатури» затверджене указом Президента України від 05 травня 1993 р., «Офіційний Вісник України», 1999, № 39.

⁵¹ Порядок складання кваліфікаційних іспитів у регіональних кваліфікаційно-дисциплінарних комісіях адвокатури, затверджений Вищою кваліфікаційною комісією адвокатури України при Кабінеті Міністрів України, протокол від 01 жовтня 1999 р. № 6/2.

tion chamber; 3) resolving by the examination chamber the decision on permitting the candidate to take the exam or on the refusal of permission to take the exam; 4) in the case of resolving by the examination chamber the decision on the permit allowing the candidate to take the exam – conducting the exam; 5) resolving by the examination chamber the decision on giving out the certificate of the right to perform advocate's activity or the refusal of giving out of such a certificate.

The session of the examination chamber, during which the advocate's exams are taken, should be conducted at least once a month. The Chairman determines the number of people who can take the exam during the next session of the examination chamber.

An Advocate's exam in the meaning of point 2 of the Procedure of conducting the exam is a check of theoretical and practical knowledge of the candidate in the area of jurisprudence, the history of the Bar, abilities of proper observance of theoretical knowledge in practice of performing the profession of advocate. The exam consists of 2 parts: oral and written. The candidate should give correct answers to all of the questions included in the examination card during the oral part and create proper legal documents during the written part of the exam. The candidate gets 1 hour to prepare to give answers during the oral part and 3 hours for preparation of the legal documents.

After giving the answers by the candidate to the examination questions and checking prepared legal documents, the examination chamber makes the decision on giving out the certificate of the right to perform the advocate's activity or on the refusal of giving such a certificate.

If a person passed the exam, the examination chamber passes on the records of the examination case to the chairman of the qualification-disciplinary commission, which is governed commonly by the meeting of 2 chambers of the commission, during which the candidate make a pledge and are given a certificate to perform an advocate's activity, which is equal to registration on the list of advocates.⁵²

⁵² For example, the Higher Qualification Commission of the Bar on the power of decision of 18 August 2006 annulled the decision of the Examination Chamber

In the case of refusal of giving out the certificate (which is equal to the refusal of signing up on the list of advocates) the way and the term of appeal against the decision to the Higher Qualification Commission or to the court is explained to the candidate. According to article 13 of the Ukrainian act on the Bar, the person, who did not pass an advocate's exam can take it again the next year.⁵³

Taking the advocate's exam. Belarusian regulation

According to article 11 of the BR Act, Qualification Commission in the Matters of Advocate's Activity in the Republic of Belarus (hereafter- Qualification Commission RB) was formed for the purpose of dealing with the issues connected to the access to the advocate's activity.⁵⁴

The Qualification Commission is formed by the Ministry of Justice of the Republic of Belarus for 3 years in the composition of at least 9 members from the representatives of the public organs, advocates with at least 5 years of experience in the profession, and other specialists of law. The chairman of the Qualification Commission RB is a deputy of the Minister of Justice ex officio.

The Qualification Commission RB conducts the exam for candidates to the right to perform the advocate's activity and also establishes the lack of negative prerequisites for registration on the list of advocates.

The meetings of the Commission are conducted in the presence of at least two thirds of the members, the decisions are made with the regular majority of the votes of the people present at the meeting.

of Regional Qualification-Disciplinary Commission of the Bar in Rowne on giving out the certificate of the right to perform an advocate's activity on the basis of the fact, that the candidate did not pledge.: Постанова Вищої кваліфікаційної комісії адвокатури України при Кабінеті Міністрів України від 18 серпня 2006 р. про наслідки перевірки Рівненської КДКА, «Архів Вищої кваліфікаційної комісії адвокатури України при Кабінеті Міністрів України», Т. IV, поз. 23-43.

⁵³ Patrz także: Гутаріна К.В., ВРКА посправае кантроль за дэвальвасцю абласных КДКА, «Адвокат», 2006, № 5, с. 52

⁵⁴ Закон Рэспублікі Беларусь аб адвакатуры от 15 июня 1993 г., «Ведомости Верховного Совета Республики Беларусь», 1993, № 20, с. 242.

When the amount of the votes are tied, the chairman has the deciding vote.

Decision of the Qualification Commission RB is a final decision and cannot be appealed against. Subsequent taking of the exam is possible not earlier than in a year, besides the apprentices, who take the exam after terminating the apprenticeship.

The rules of the Qualification Commission RB are approved by the Ministry of Justice.

In the case of not taking advocate's exam by the apprentice, he is expelled from the Bar on the basis of the decision of the presidium of the board of advocates (point 1.5. of the Rules of apprenticeship RB). In the extraordinary cases for a person who took the exam, the period of the apprenticeship can be prorogated to 1 year. Extraordinary means such exceptional circumstances, which would be an obstacle for the normal course of apprenticeship (for example coincidence of difficult family circumstances or others). In the cases of next not taking the exam, an apprentice is expelled from the Bar, because he is unable to perform the profession of advocate⁵⁵.

According to article 12 of the Act RB, advocate's activity can be performed only by a person, who got a license in using the proper procedure. The license of the performance of advocate's activity is given by the Ministry of Justice on the basis of the decision of the Qualification Commission RB for 5 years. Prolongation of the validity of license for another 5 years is conducted before the Ministry of Justice on the application of a citizen, with the consideration of the results of attestation conducted by the proper advocates board.

Refusal of giving the license for the performance of advocate's activity takes place on the basis of the negative prerequisites stated in the Act RB and also, in the case if the candidate will not gain license, from the time of submitting application for taking advocate's exam and from the time of gaining the license worked on a position, on which the seniority in public organs is credited.

⁵⁵ Положениe о стажировке в адвокатуре утверждено Министерством юстиции Республики Беларусь от 30 июня 1999 г.

The decision of refusal of giving the license or the decision of prolonging its validity can be appealed against during 1 month from its presentation.

Taking the advocate's exam. Russian regulation

An exam, as a requirement of access to the profession of advocate in Russia, on the legal level was introduced by the new act from 2002. The jurisdiction on the Bar of the USSR, which was binding in Russia to 2002, did not provide the requirement of passing the exam so as to be accepted to the advocate's corporation. The mechanism, which existed at that time consisted in the fact, that the legal aid centers themselves gave advices to the Presidium of Advocates Board about accepting their "protégée" to the Bar.³⁶ Now the procedure of conducting advocate's exam is provided by article 10 of the Act FR. A person fulfilling the a.m. requirements considering applying to be registered on the list of advocates, has to submit the application to the Qualification Commission by the Advocate's Chamber (hereafter – the Qualification Commission) to conduct the exam and make a decision on the registration on the list of advocates. The Qualification Commission is chosen for 2 years in the number of 13 members: from advocate's chamber – 7 advocates, but the member of the commission can only be an advocate with at least 5 years of experience; from territorial organ of Ministry of Justice – 2 representatives; from the legislative (representative) public organ of Russian Federation- 2 representatives, from the supreme court of the republic, the court of autonomic district and the court of autonomic constituency – 1 judge, from the arbitration court of Russian federation – 1 judge. The chairman of the commission is the president of advocate's chamber *ex officio*.

The interested party, who did not take the exam, can take it again, but not earlier than in 1 year. The Qualification Commission can refuse the interested party, who passed the exam, registration on the list of advocates, except from the cases, when after taking the exam

³⁶ Мельниченко Р.Г., О принципах формирования адвокатской корпорации в России, „Адвокат“, 2004, № 9, с. 9.

the Qualification Commission got to know about existing prerequisites hindering the access to taking the qualification exam. In such a situation the decision on the refusal of registration on the advocates list can be appealed against in court.

FINAL CONCLUSIONS

What was mentioned in the beginning, for the professional preparation of the people providing legal aid – advocates, depend such values of the democratic rule of law state as: implementation of the access of justice, efficiency of the jurisdiction and the safety of widely understood safety of legal transactions. By doing the comparative analysis of the corresponding regulations connected with professional preparation of advocates in Polish, Ukrainian, Belarusian and Russian law, we can see, that the problems connected to these are similar in those systems. We can also say, that in all those legal systems, there are similar rules, on which the system of professional preparation of advocates is based on, particularly:

1. The rule of access to the profession of advocate is limited only to the people with an advanced legal education;
2. The rule of need to perform an advocate's apprenticeship by the candidate for advocate or getting professional experience by performing some other legal profession;
3. Taking of an advocate's exam.

However there are some people, who find the obligation of performing an advocate's apprenticeship and gaining professional experience by performing the other legal professions as an alternative, and also the rules of conducting advocate's exam, highly controversial. Controversies of these requirements are connected to the need of combining the dilemma of providing high quality legal services by putting the proper demands to the candidates on advocates – on the one hand, and on the other hand- enabling a wide access to the profession of advocate for all the graduates of law who are interested. Combining those two contradictions seems to be possible by creating

a model of access to the profession of lawyer based on the rules of a democratic rule of law state, especially by:

– Substitution of the competences related to conducting advocate's exam to the commission consisting of advocates (at least half of the members of the commission) and the representatives of other legal professions (for example judges, professors of law and others). Such commissions cannot be dominated by the organs of the public (also the Minister of Justice), because it is at conflict with the essence of the role of the Bar as an independent institution of civic society. It is important to remember, that the domination of the Minister of Justice over the Bar is characteristic for non-democratic countries, which was mentioned in this article on the example of Belarus.

– Restriction to a minimum number of the cases when the experience of performing another profession can be regarded as the equivalent to performing an advocate's apprenticeship. The condition of this rule should simplify the regulations concerning the entry in the list of advocate's apprentices. It seems to be the most justified regulation, that the advocate himself, who becomes a patron, decides on the acceptance to the apprenticeship, not the public commissions or the organs of advocate's self-government.