

DUTIES OF A LAWYER TO A COURT AND TO A CLIENT

TETYANA VILCHYK,

Yaroslav Mudryi National Law University (Kharkiv, Ukraine)

DOI: 10.17589/2309-8678-2018-6-4-62-99

The article provides a comparison of legislation of the United States, Australia, the EU and Ukraine regulating the legal status of a lawyer in the administration of justice mechanism, as well as an analysis the correlation of his duties to the court and to the client. The author recommends that a lawyer not act in a manner that best serves the interests of the client since this will put the course of justice and public confidence in the profession in a vulnerable position; attorneys have to inform clients that their duty to the court is of paramount importance. In case of improper performance of their professional duties, lawyers should be brought not only to corporate liability (disciplinary liability, which is established by the legislation of Ukraine), but also to the civil law (property) liability that is proposed to be established. It is necessary for Ukraine to introduce insurance institution against a lawyer's property liability as a means of minimizing the negative consequences for a lawyer, assuming such liability results from an error and such lawyer is obliged to compensate the harm caused to the client.

Keywords: lawyer; lawyer's duties to the court; lawyer's duties to the client; judiciary; ethics of the lawyer; relations between the lawyer and the court.

Recommended citation: Tetyana Vilchyk, *Duties of a Lawyer to a Court and to a Client*, 6(4) Russian Law Journal 62–99 (2018).

Table of Contents

Introduction

1. A Lawyer's Duties to the Court

1.1. Showing Respect to the Court and Other Participants of the Process

1.2. Assistance in the Use of Limited Court Resources

1.3. The Inadmissibility of Abuse of the Process and Misleading of the Court

1.4. Direction of Clients in Litigation to Act in the Interests of Promoting Public Confidence in the Judiciary and the Administration of Justice

1.5. Attorney's Attention to a Judge's Mistakes Made During a Trial

2. Duties of a Lawyer to a Client and Their Relationship with the Duties of a Lawyer to a Court

3. Responsibility of the Lawyer for Violation of His Duties

Conclusion

Introduction

The international scientific doctrine does not give an explicit unambiguous answer to the question of whether a lawyer's priority should be his duty to a court or to his client. This article consists of an introduction and three parts. The first part examines the ethical relationship between judges and lawyers, and reveals the essence and significance of the duties of a lawyer to a court. The second part examines the duties of a lawyer to his client, as well as the problem of determining whether a lawyer's first duty is to the court or the client. The final part examines the problems of the lawyer's liability to a client, the concept of "legitimate interests of the client" and the effect of the immunity of the lawyer in different jurisdictions.

1. A Lawyer's Duties to the Court

There can be no rule of law without independent justice. Moreover, there is no rule of law without an independent legal profession. Regarding this, in his annual speech, former President of the Dutch Bar Association, Wille Beckers, said:

A state in which rule of law prevails can only exist due to the existence of an independent judiciary and independent advocacy. Independent from each other. A judge, prosecutor and lawyer – each of them is responsible for their actions, but together they are responsible for the quality of justice based on the principle of "triple responsibility."¹

¹ Ван дер Пол Р. Судді та адвокати в цивільному процесі: як стаття 6 Конвенції впливає на професійну взаємодію між суддями та адвокатами. Погляд голландських суддів // Precedent UA. 09.02.2015 [Ruth van der Pol, *Judges and Lawyers in Civil Procedure: How Does Article 6 of the Convention Affect Professional Interaction Between Judges and Lawyers. The View of the Dutch Judges*, Precedent UA, 9 February 2015] (Oct. 10, 2018), available at <https://precedent.in.ua/2015/05/29/suddi-ta-advokaty-v-tsyvilnomu-protsezi-yak-stattya-6-konventsiji-vplyvaye-na-profesijnu-vzayemodiyu-mizh-suddyamy-ta-advokatamy-poglyad-gollandskyh-suddiv/>.

The Institution of Advocacy and judicial power are closely connected by their constitutional nature and socio-legal content. The constitutional right to professional legal assistance (Arts. 59 and 131-2 of the Constitution of Ukraine) rightly refers to the basic constitutional guarantees of the right to access to justice, which, in its turn, is an integral part of the right to judicial protection (Art. 55 of the Constitution of Ukraine). The latter's effectiveness is also largely stipulated by the level of legal aid provided by lawyers. The right to help from a professional lawyer is one of the procedural safeguards that promote a fair trial. It is not by chance that, under the amendments to the Constitution of Ukraine in 2016, the rules devoted to the Institution of Advocacy, are placed in Section VIII "Justice," emphasizing the role and significance of this human rights' protection institution and defining its role and place as an adjacent legal institution that acts in the mechanism of legal proceedings, along with other institutions. In the Strategy for Reforming of the Judiciary, Legal Proceedings and Related Legal Institutions for 2015–2020 the bar and the judiciary are recognized as equal and adjacent institutions promoting the activity of the judiciary.²

Recognition of the close relationship between the bar and the judiciary, and the implementation by lawyers of the right of everyone to professional legal assistance as necessary conditions for the purposes of protection of the rights and freedoms of the individual give rise to a whole number of issues of interaction between the bar and the court. These issues can be of both a legal and moral-psychological nature. In any case, the answer to them may be significant for the functioning and development prospects of both the advocacy and the court, and the definition of place and role of advocacy as one of the human rights institutions of society, which is simultaneously an integral part of the state mechanism for the administration of justice.³

Unlike Ukraine, in the legislation of the most countries of Western Europe, the place of advocacy and its relationship with the judicial system are determined quite clearly and unambiguously. The concept of advocacy in Germany is determined by the Federal law on Advocacy as an independent organization in the justice system.⁴ In Articles 1 and 38 of the Code of Professional Ethics of the Attorneys of Greece of 4 January 1980 (Kodex Deontologias), the Institution of Advocacy is characterized as a "body of justice." In the Law of France No. 71-1130 of 31 December 1971 "On the Reform of Certain Judicial and Legal Professions" it is underlined that "lawyers are

² Стратегія реформування судоустрою, судочинства та суміжних правових інститутів на 2015–2020 роки [Strategy for Reforming of the Judiciary, Legal Proceedings and Related Legal Institutions for 2015–2020] (Oct. 10, 2018), available at <http://zakon2.rada.gov.ua/laws/show/276/2015>.

³ Tetyana B. Vilchyk, *Advocacy as a Human Rights Institution in the Mechanism of Legal Proceedings*, 2 European Reforms Bulletin 78 (2015) (Oct. 10, 2018), available at http://1201.nccdn.net/4_2/000/000/03f/ac7/European_Reforms_Bulletin_2015_2_full_pdf.

⁴ Bundesrechtsanwaltsordnung vom 01.08.1959 (BGBl. I 1959 S. 565) (Oct. 10, 2018), available at <https://www.gesetze-im-internet.de/brao/>.

justice assistants.⁵ Considerable attention to the legal regulation issues of a lawyer's status is given in the legislation of Bulgaria where the lawyer's activity is equated with the activity of judges, and, furthermore, lawyers have the right to initiate disciplinary prosecutions of violators of his professional rights. Therefore, in accordance with the Bulgarian Bar Act, the lawyer makes use of equal respect with judges and this is put into practice in the fact that interaction with him is the same as between a judge and the jurisdictional, administrative and other bodies of the country (Art. 10(1)).⁶ It is quite possible to separate two areas of the relationship between judges and lawyers. On the one hand, these are relations derived from procedural principles and rules and which have a direct influence on the efficiency and quality of legal proceedings. On the other hand, it is a relationship that derives from the professional conduct of judges and lawyers and requires mutual respect for the roles played by both parties and a constructive dialogue between judges and lawyers.

In the recommendations set forth in Opinion No. 11 (2008) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions and it is noted that

The standard of quality of judicial decisions is clearly the result of interactions between the numerous actors in the judicial system,⁷

including between judges and attorneys.

The relations between judges and lawyers should be based on a mutual understanding of the role of each of them, and on a mutual respect and awareness of each other's independence. Only under such conditions is it possible to achieve fair justice. In Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to Member States on Judges: Independence, Efficiency and Responsibilities, it is stated that

The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.⁸

⁵ Loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques. Version consolidée au 17 octobre 2018 (Oct. 10, 2018), available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068396>.

⁶ The Bar Act of Bulgaria, published in the State Newspaper No. 55 of 25 June 2004, as at 14 July 2018 (Oct. 10, 2018), available at <http://solicitorbulgaria.com/index.php/bulgarian-bar-act-part-1>.

⁷ Opinion No. 11 (2008) of the Consultative Council of European Judges (CCJE) to the Attention of the Committee of Ministers of the Council of Europe on the Quality of Judicial Decisions, CCJE(2008)5, 18 December 2008 (Oct. 10, 2018), available at <http://www.courtexcellence.com/~media/Microsites/Files/ICCE/CCJE.ashx>.

⁸ Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, 17 November 2010, para. 7 (Oct. 10, 2018), available at <https://rm.coe.int/16807096c1>.

Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the Freedom of Exercise of the Profession of Lawyer, the Code of Conduct for Lawyers in the European Union, which are recognized as examples for the interpretation and application in national deontological norms, determine the complex of lawyer's duties, which can be divided into: duties to clients; duties to the court and other state bodies; duties to advocacy as a whole and other lawyers; and duties to society.⁹

Amongst those duties, the first two duties, the duty to the court and to the client, often conflict each other to the extent that they may place the lawyer in limbo especially in determining which duty prevails or is to be regarded as primary or the foundation of the other.

If the problems of the mutual relations between the lawyer and the client are more or less investigated in the national legal doctrine, then the problems of the mutual relations between judges and lawyers, which are very relevant at the moment, have not been studied sufficiently.

Benjamin Cardozo, former Associate Justice of the U.S. Supreme Court, stated that "[m]embership of the bar is a privilege, burdened with conditions."

For the advocate those conditions and responsibilities can be immense and often difficult to balance. As lawyers we are required to fulfill and balance our duties to the client, opposing counsel, to the administration of justice and to society.

Central to our ethical responsibilities as advocates is that we must employ tactics that are legal, honest and respectful to courts and tribunals; we must act with integrity and professionalism. And we must do these things while maintaining what I would suggest is our overarching responsibility to ensure civil conduct in the advancement of our clients' interests.¹⁰

A lawyer's duty to the court is a fundamental obligation that defines a lawyer's role within the adversarial system. However, a lawyer's duties are not carried out in a vacuum. While facing financial and competitive pressures, lawyers must fulfill and balance their duties to the client, opposing counsel, the administration of justice and society.¹¹

⁹ Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the Freedom of Exercise of the Profession of Lawyer, 25 October 2000 (Oct. 10, 2018), available at <https://rm.coe.int/1680502fe8>; Code of Conduct for Lawyers in the European Union, adopted at the Plenary Session of Council of Bars and Law Societies of Europe (CCBE) held on 28 October 1988 (Oct. 10, 2018), available at https://www.idhae.org/pdf/code2002_en.pdf.

¹⁰ Graeme Mew, *Effective Advocacy Through Civility* (Oct. 10, 2018), available at www.nswbar.asn.au/docs/professional/prof_dev/BPC/course_files/Effective_Advocacy_Through_Civility_-_Mew_updated_new.pdf.

¹¹ Sani Rabi'u Bello Esq., *Ethics and Legal Professionalism in Relation to the Courts: A Panacea to Smooth Administration of Justice* (Oct. 10, 2018), available at <http://www.unimaid.edu.ng/oer/Journals-oer/Law/Private%20Law/vol2-1/Doc%2014a.pdf>. See discussion in Jordan Furlong, *Professionalism Revived*:

It is generally acknowledged that attorneys have a duty to a court, but the overall definition of these responsibilities is not an easy task. In 1998, the judge of the Supreme Court of Western Australia, David Ipp, wrote the revolutionary article “Lawyers’ Duties to the Court,” in which he made an attempt to define and put in order the duties of lawyers in court. Some, at first glance, separate manifestations of the duties of a lawyer in court have been classified by him according to the following general criteria:

Do not abuse the trial; not to cause damage to justice; to do business efficiently and promptly. Recognizing the primacy of the lawyer’s duties to the court does not mean that these duties of a lawyer relate to a particular judge, it is a tribute to the public interest in the administration of justice, and the duties of a lawyer in relation to the court act as the guarantor of proper administration of justice. Violation of the duties of a lawyer in court is unlawful behavior. Such behavior does not necessarily have to be unethical. On the other hand, unethical behavior may not necessarily be illegal.¹²

Otherwise, lawyer’s duties have been set out by Robert Bell and Caroline Abela, who assert that the main responsibilities are as follows: 1) to be honest and attentive; 2) to act professionally and 3) to direct clients in the court proceedings so that it would make a contribution to public trust in justice.¹³

In a practical course for lawyers, Graeme Mew states that

A lawyer’s duty to the court entails three key duties:

- to use tactics that are legal, honest and respectful to courts and tribunals; to act with integrity and professionalism while maintaining his or her overarching responsibility to ensure civil conduct; and
- to educate clients about the court processes in the interest of promoting the
- public’s confidence in the administration of justice.¹⁴

International Principles on Conduct for the Legal Profession, adopted on 28 May 2011 by the International Bar Association state that

Diagnosing the Failure of Professionalism Among Lawyers and Finding a Cure in Tenth Colloquium on the Legal Profession: Professionalism: Ideals, Challenges, Myths and Realities (Toronto, Ont.: Continuing Legal Education, Law Society of Upper Canada, 2008) (Oct. 10, 2018), available at https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/t/tenth_colloquium_furlong.pdf.

¹² David Ipp, *Lawyers’ Duties to the Court*, 114 *Law Quarterly Review* 63 (1998) (Oct. 10, 2018), available at <https://auckland.rl.talis.com/items/7B55AF42-47A7-C0B6-1758-E9EE61365682.html>.

¹³ Robert Bell & Caroline Abela, *A Lawyer’s Duty to the Court* (Oct. 10, 2018), available at http://www.weirfoulds.com/files/11024_10167_CEA%20-%20A%20Lawyer’s%20Duty%20to%20the%20Court.pdf.

¹⁴ Mew, *supra* note 10.

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.¹⁵

Western Australian Barristers' Rules of 5 October 2011 stated that

- (a) barristers owe their paramount duty to the administration of justice;
- (b) barristers must maintain high standards of professional conduct;
- (c) barristers as specialist advocates in the administration of justice, must act honestly, fairly, skilfully and with competence and diligence;
- (d) barristers owe duties to the courts, to their clients and to their barrister and solicitor colleagues;
- (e) barristers should exercise their forensic judgments and give their advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.¹⁶

Pursuant to the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015,

A solicitor's duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.¹⁷

According to Sir Gerard Brennan,

the purpose of the lawyer in the trial is the proper administration of justice, and the purpose of the trial is to administer justice in accordance with the law. It is the basis of a civilized society.¹⁸

As pointed out in his speech at the seminar of the Victorian Bar Association, Justice Tony Pagone states that the administration of justice in the adversarial process depends to a large extent on the proper performance of the duties of lawyers in

¹⁵ International Bar Association, *International Principles on Conduct for the Legal Profession*, 28 May 2011, para. 5.1 (Oct. 10, 2018), available at <https://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C>.

¹⁶ Western Australian Bar Association, *Western Australian Barristers' Rules*, 5 October 2011, as at 23 February 2017, para. 5 (Oct. 10, 2018), available at [https://www.wabar.asn.au/images/file/Western%20Australian%20Barristers'%20Rules%20\(23%20February%202017\).pdf](https://www.wabar.asn.au/images/file/Western%20Australian%20Barristers'%20Rules%20(23%20February%202017).pdf).

¹⁷ Legal Services Council, *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, para. 3.1 (Oct. 10, 2018), available at <https://www.legislation.nsw.gov.au/regulations/2015-244.pdf>.

¹⁸ Sir Gerard Brennan, *Strengths and Perils: The Bar at the Turn of the Century in The Byers Lectures 2000–2012* 1 (N. Perram & R. Pepper (eds.), Annandale, N.S.W.: The Federation Press, 2012).

court and the conduct of their affairs. The judge is unable to know in advance what witnesses will be called, which evidences should be prioritized, or which questions should be asked during a cross-examination. Decisions on issues that will necessarily affect the course of the trial and its duration will be assumed by a lawyer, not by a judge. The only thing that determines the role of a lawyer in court is his task of helping the court in the proper resolution of the dispute. It is in this sense that both the judge and the lawyer are jointly involved in the administration of justice. The duty of a lawyer in court, and the duty that he has before the client, is how the client's case is presented and explained to the person making the decision. The lawyer "is personally responsible for the conduct and presentation" of the case in court and "must exercise personal judgment upon the substance and purpose of statements made and questions asked." Judges rely on what is said to them by lawyers.

Therefore, Justice Tony Pagone has defined the nature of the lawyer's duties in the court as *common participation with judges in the cause of administration of justice*,¹⁹ which is a revolutionary point of view for the national scientific doctrine.

The desire to win a case does not play any role in relation to liability before a court. In *Giannarelli v. Wraith*, the High Court of Australia pointed out that the role of a lawyer is not merely the representation of the interests of his client in the adversarial process, but also to help the court in the administration of justice in accordance with the law.²⁰

The fact that the duty of a lawyer is to act within the law, helping the court to reach a proper resolution of the dispute in reasonable terms and in an effective manner, was recognized by courts in many court decisions.²¹

Though it is not easy to tell precisely which duty prevails over the other, in practice the majority of lawyers consider the duty to the client as supreme. That such an opinion is common among lawyers and scholars in Ukraine is partly explained by the peculiarities of the national legislation.

There is also a third position on this problem, which, on the one hand, is possible to agree with and, on the other hand, does not resolve practical questions for lawyers and does not give a clear answer to the question of its concrete application in this or that situation. The position proposes that *each duty complements the other as a composite of the general duty to the public and the primacy of either duty depends on the circumstances or context of each case*.²² Thus, the decision of this issue is left to

¹⁹ Tony Pagone, *The Advocate's Duty to the Court in Adversarial Proceedings*, Victorian Bar Ethics Seminar, 23 July 2008 (Oct. 10, 2018), available at <http://classic.austlii.edu.au/au/journals/VicJSchol/2008/10.pdf>.

²⁰ *Giannarelli v. Wraith* [1988] 165 C.L.R. 543.

²¹ See, e.g., *D'Orta-Ekenaike v. Victoria Legal Aid* [2005] 223 C.L.R. 1; *Giannarelli v. Wraith*, *supra* note 20.

²² Vincent Mtavangu, *Balancing a Duty to the Court and the Client: A Dilemma in Legal Practice in Tanzania*, 4(2) Open University Law Journal 147 (2013).

the discretion of the lawyer, who again finds himself in an uncertain situation and can make a mistake.

Based on the study of foreign scientific doctrine, we are able to conclude that *the main duty of a lawyer before a court is promotion of the proper and efficient administration of justice*, which, in its turn, includes:

- *showing respect to the court and other participants of the process;*
- *assistance in using a limited court resource;*
- *inadmissibility of misuse of the process and misleading the court;*
- *directing clients in litigation in the interest of promotion public confidence in the judiciary and the administration of justice;*
- *drawing the judge's attention to the mistakes which he possibly made during the trial.*

Let us consider these duties of the lawyer according to the proposed classification.

1.1. Showing Respect to the Court and Other Participants of the Process

The law associated with contempt of court is meant to protect the rule of law and the institutional integrity of the administration of justice, not the personal esteem or dignity of a judge.²³

Civility and public discourse lies at the heart of democracies around the world,²⁴ including in Canada, the U.S., the UK, Australia, and the EU.²⁵

In Ontario, the Rules of Professional Conduct require that

When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.²⁶

The Ontario Court of Appeal stated that the court and counsel have a shared responsibility to maintain civility, both inside and outside the courtroom. In *Landolfi*

²³ *Re Duncan* [1958] S.C.R. 41; *R. v. Gray* [1900] 2 Q.B. 36; *Re Ouellet (No. 1)* (1976), 67 D.L.R. (3d) 73, at p. 93. See Paul M. Perell, *The Civil Law of Civility*, Chief Justice of Ontario's Tenth Colloquium on the Legal Profession, 28 March 2008 (Oct. 10, 2018), available at <https://docslide.net/documents/papers-from-the-10th-colloquium-paul-perell-the-civil-law-of-civility.html>.

²⁴ Kenneth Grady, *The Election, the Rule of Law, and the Role of Lawyers*, Seytlines.com, 17 November 2016 (Oct. 10, 2018), available at <https://www.seytlines.com/tag/rule-of-law/>.

²⁵ Eric Sigurdson, *Civility, Advocacy, and the Rule of Law: From Wall Street to Main Street, From the Boardroom to the Courtroom – Lawyer Civility Is Crucial in an Uncivil World*, Sigurdson Post, 30 June 2018 (Oct. 10, 2018), available at <http://www.sigurdsonpost.com/2018/06/30/civility-advocacy-and-the-rule-of-law-from-wall-street-to-main-street-from-the-boardroom-to-the-courtroom-lawyer-civility-is-crucial-in-an-uncivil-world/>.

²⁶ Law Society of Ontario, Rules of Professional Conduct, adopted by Convocation on 22 June 2000, effective 1 November 2000, r. 5.1-1 (Oct. 10, 2018), available at <https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-5>; see also *Groia v. Law Society of Upper Canada* (Supreme Court of Canada), 2016 O.N.C.A. 471, paras. 12, 13 (Oct. 10, 2018), available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17113/index.do>.

et al. v. Fargione, the same Court stated that the trial judge has a responsibility to maintain civility in the courtroom.²⁷

In *R. v. Felderhof*, the Court of Appeal also stated that uncivil behavior in the courtroom diminishes the public's respect for the court and for the administration of justice and thereby undermines the legitimacy of the results of the adjudication.²⁸

The duty of lawyers to the court is important, if only because there are consequences for lawyers who fail to comply with them. The evidence for this is the possibility of lawyers being subject to punishment for contempt of court, and administrative, and even criminal, liability. However, disrespect does not necessarily apply to such actions for which responsibility is provided for by law.

It is pointed out in the legislation of Ukraine that the persons participating in proceedings address to the court with the words *Your honor* or *Respected court* (Art. 161 of the Civil Procedure Code of Ukraine²⁹, Art. 329(3) of the Criminal Procedure Code of Ukraine³⁰). But these forms of address are only used in relation to judges during the administration of justice. There is no procedural compulsion established by the law that could be applied to a person who fails to use such forms of address or fails to address the judge at all. Also, the law does not specify the way to address a judge outside the courtroom.

Disrespect to a court in Great Britain and the United States is, as a rule, considered an action (act or omission), which directly or indirectly harms the normal course of the proceedings.³¹ Disrespect to a court may be any intervention in the administration of justice: premature publication in the press, negotiations with the jury, pressure on parties and witnesses, inadmissible conduct in the court, or insubordination. For example, in Great Britain the Contempt of Court Act 1981³² established the *strict liability rule*, according to which the person is responsible for interference in the administration of justice regardless of his intentions.

The establishment of responsibility for contempt of court is considered one of the conditions of the independence of the judge in the administration of justice.

²⁷ *Landolfi et al. v. Fargione* (2006), 79 O.R. (3d) 767 (Ont.C.A.), para. 101 (Oct. 10, 2018), available at <https://www.canlii.org/en/on/onca/doc/2006/2006canlii9692/2006canlii9692.html>.

²⁸ *R. v. Felderhof* (2004), 68 O.R. (3d) 481 (C.A.), para. 83 (Oct. 10, 2018), available at http://www.osc.gov.on.ca/en/Proceedings_nr_20040419_osc-r-v-felderhof.htm.

²⁹ Цивільний процесуальний кодекс України від 18.03.2004 No. 1618-IV [Civil Procedure Code of Ukraine No. 1618-IV of 18 March 2004] (Oct. 10, 2018), available at <http://zakon5.rada.gov.ua/laws/show/1618-15>.

³⁰ Кримінальний процесуальний кодекс України від 05.04.2001 No. 2341-III [Criminal Procedure Code of Ukraine No. 2341-III of 5 April 2001] (Oct. 10, 2018), available at <http://zakon5.rada.gov.ua/laws/show/4651-17>.

³¹ *Гальперин М.Л.* Ответственность в гражданском судопроизводстве: актуальные вопросы теории и процессуальной политики [Mikhail L. Galperin, *Responsibility in Civil Judicial Proceedings: Topical Issues of Theory and Procedural Policy*] 55 (Moscow: Wolters Kluwer, 2011).

³² Contempt of Court Act 1981, c. 49 (Oct. 10, 2018), available at <http://www.legislation.gov.uk/ukpga/1981/49>.

On the other hand, the lawyer should not leave without giving attention to the violation of the law, the tactless and disrespectful attitude of the court and other process participants to his client, himself or the bar as a whole, and has to respond to the corresponding actions in the forms provided for by the current legislation and/or acts of the bodies of attorney self-government.³³ It is very important in the courtroom to maintain an atmosphere that would be based on mutual respect of the participants in the process, pleasant and open to free debate, exchange of opinions and points of view.

For the commission of actions by an advocate, which can be qualified by the court as a lack of respect by him, the liability is placed on the lawyer, established by law. In particular, Art. 185-3 of the Administrative Offences Code of Ukraine provides that

contempt of court, which violates the guarantee of independence of judges or undermines the authority of justice, entails the imposition of a fine of fifty to one hundred and fifty times the non-taxable minimum income (currently 17 UAH).³⁴

Ukrainian legislation regulating liability for contempt of court refers the decision on this issue to the discretion of the court itself, which does not exclude the possibility of abuse of this right. In addition, the national legislation not only fails to disclose the notion of “contempt of court” and does not mention its qualifying features, but does not provide a specific list of acts that can be regarded by the court as contempt of it. Therefore, one should agree that

The possibility of the existence of such a broad interpretation of the concept of “contempt of court” and establishing severe sanctions for acts in which such disrespect is expressed is possible only where the principles of legality and the rule of law, equality and independence of the participants in the process will not be declarative, but will be observed by all participants in the process, among them by the judges.³⁵

³³ Правила адвокатської етики, затверджені Звітно-виборним з'їздом адвокатів України 2017 року 09.06.2017 [Advocate's Rules of Ethics, approved by the Reporting and Election Congress of Lawyers of Ukraine on 9 June 2017] (Oct. 10, 2018), available at http://unba.org.ua/assets/uploads/legislation/pravila/2017-06-09-pravila-2017_596f00dda53cd.pdf.

³⁴ Кодекс України про адміністративні правопорушення від 07.12.1984 No. 8073-X [Administrative Offences Code of Ukraine No. 8073-X of 7 December 1984] (Oct. 10, 2018), available at <http://zakon3.rada.gov.ua/laws/show/80731-10>.

³⁵ *Заборовский В.В.* Правовая сущность ответственности адвоката за проявление неуважения к суду по законодательству Украины // Сибирский юридический вестник. 2016. No. 3(74). С. 118 [Viktor V. Zaborovsky, *The Legal Essence of the Responsibility of the Lawyer for Disrespect to the Court According to the Legislation of Ukraine*, 3(74) Siberian Legal Herald 115, 118 (2016)].

The following case is significant: Judge Raymond Voet held himself in contempt of court and paid a \$25 fine. During the prosecutor's closing argument during a jury trial in Ionia County 64A District Court, Voet's new touchscreen smartphone, which was in his shirt pocket, began to emit a noise. At the next recess, Voet held himself in contempt of court, fined himself \$25, and stated on the record

If I cannot live by the rules that I enforce, then I have no business enforcing these rules.³⁶

Under Ukrainian legislation, contempt of court is not considered a crime but rather an administrative offence; in most foreign countries criminal liability is provided for the commission of such an offense. For example, contempt of court in Russia, expressed by insulting proceedings' participants, qualifies as criminally punishable (Art. 297 of the Criminal Code of the Russian Federation³⁷).

At the same time, the qualification of this action causes certain difficulties in law enforcement practice. This is due, among other things, to the fact that the legislator describing, in Article 297 of the Criminal Code of the Russian Federation, the objective side of contempt of court, does not disclose specific methods of its commission. The term *insult* is used, which itself needs to be made concrete.³⁸ In practice, the difficulty arises in differentiation of contempt of court as a criminal action from other manifestations of contempt, liability for which is provided for by other branches of law, which is due to the vagueness of the legal regulation of this issue.³⁹

The procedural legislation of Ukraine contains rules according to which the participants of the process, as well as other persons present in the courtroom, are obliged to unquestioningly comply with instructions of the presiding judge, observe established order in the court session and refrain from any actions that would be obvious contempt of court or established court rules (Art. 162(3) of the Civil Procedure Code of Ukraine, Art. 134(2) of the Code of Administrative Court Procedure

³⁶ Judge Imposes Fine on Self for Cell Phone Mishap, Ionia Sentinel-Standard, 12 April 2013 (Oct. 10, 2018), available at <http://www.sentinel-standard.com/article/20130412/NEWS/130419815>.

³⁷ Уголовный кодекс Российской Федерации от 13 июня 1996 г. No. 63-ФЗ [Criminal Code of the Russian Federation No. 63-FZ of 13 June 1996] (Oct. 10, 2018), available at http://www.consultant.ru/document/cons_doc_LAW_10699/.

³⁸ Курсаев А.В. Уголовно-правовая характеристика способов неуважения к суду (по материалам судебной практики) // Вестник Московского университета МВД России. 2016. No. 6. С. 69–77 [Alexander V. Kursayev, *Criminal and Legal Characteristics of Types of Contempt of Court (on the Materials of Judicial Practice)*, 6 Bulletin of Moscow University of the Ministry of Internal Affairs of Russia 69 (2016)].

³⁹ Герасимова Е.В. Преступление, предусмотренное ст. 297 УК РФ: проблемы расследования и установления вида ответственности // Тамбов: Грамота. 2016. No. 8(70). С. 47–50 [Elena V. Gerasimova, *The Crime Under Art. 297 of the Criminal Code of the Russian Federation: Problems of Investigation and Determination of the Type of Responsibility*, 8(70) Tambov: Gramota 47 (2016)].

of Ukraine,⁴⁰ Art. 74(4) of the Commercial Procedure Code of Ukraine⁴¹). Based on an analysis of these rules, one can come to the conclusion that for commission of any of the said actions (in particular, failure to comply with the instructions of the presiding judge), even in case of commission thereof for the first time, a lawyer can be brought to liability.

It should be kept in mind that application of administrative measures to a lawyer is not an obstacle to a court appealing to the regional qualification and disciplinary commissions for the purpose of disciplinary measures. As court practice shows, in most cases, when raising of the question of disciplinary liability of a lawyer with a relevant qualification and disciplinary commission, the courts point out that it was an action by the lawyer that prevented the execution of justice and has signs of contempt of court.

According to the data of the Unified State Register of Court Decisions of Ukraine⁴² of 24 August 2018, from 2016 to 2018, 10 proceedings on administrative offences provided for in Art. 185-3 of the Administrative Offences Code of Ukraine were initiated against lawyers. Most of the decisions on these cases were reversed by the appellate instance (6), or sent for proper registration to the body that issued the resolution. In all cases, for the said period, the courts imposed an administrative penalty on the lawyers in the form of a fine in the amount of UAH 850 (RUB 2,030).

The most widespread ground for the termination of administrative proceedings against lawyers is the absence of any administrative offense being properly documented. For example, a judge of the city court of the Zaporozhye Region imposed a fine on a lawyer on the basis of Art. 185-3 of the Administrative Offences Code of Ukraine for “a manifestation of contempt of court.” Specifically, the record indicated that the “lawyer did not react to the remarks of the presiding judge, and also violated lawyers’ ethics, by way of which she manifested contempt of court.” The lawyer appealed the resolution on imposition of a fine, and the court of appellate instance revoked it and closed the proceedings in the case in connection with the lack of the evidence of the offense. In its reversal of the resolution on imposition of a fine, the court pointed out the following: the violation of the procedure of the court session should have been specified, namely, how the failure to respond to the remarks of the presiding judge correlated with the offence set out in Art. 185-3 of the

⁴⁰ Кодекс адміністративного судочинства України від 06.07.2005 No. 2747-IV [Code of Administrative Court Procedure of Ukraine No. 2747-IV of 6 July 2005] (Oct. 10, 2018), available at <http://zakon5.rada.gov.ua/laws/show/2747-15>.

⁴¹ Господарський процесуальний кодекс України від 06.11.1991 No. 1798-XII [Commercial Procedure Code of Ukraine No. 1798-XII of 6 November 1991] (Oct. 10, 2018), available at <http://zakon2.rada.gov.ua/laws/show/1798-12>.

⁴² Єдиний державний реєстр судових рішень України [Unified State Register of Court Decisions of Ukraine] (Oct. 10, 2018), available at <http://reyestr.court.gov.ua/>.

Administrative Offences Code of Ukraine, which provides, in particular, such a form of contempt of court as “disobeying of the presiding person’s instructions.”⁴³

Sometimes judges subject lawyers to administrative liability for contempt of court without legitimate reason. The head of the district court of the city of Dnipro has brought a lawyer to administrative responsibility for filming a court session on a mobile phone. The lawyer correctly pointed out that, according to Art. 11(4) of the Law of Ukraine “On the Judiciary and Status of Judges,” persons present in the courtroom may make video and audio recordings in the courtroom using portable video and audio recorders without obtaining a separate court authorization, but taking into account the limitations established by law.⁴⁴

As Oleksandr Drozdov, the chairman of the Higher Qualification and Disciplinary Bar Commission of Ukraine (HQDBC), stated:

...often, client’s interests conflict with the ethics of relations in a court session. Excessive perseverance and adherence to principle in defending the interests of the client by the counsel for the defense sometimes crosses the boundary and can be considered disrespectful by judges. The HQDBC has received a lot of complaints from judges in connection with this.⁴⁵

As a rule, judges either complain about the lack of discipline of lawyers who does not appear in the court sessions or about their unsuitable behavior during the trial.⁴⁶

⁴³ Прояв неповаги до суду у випадку притягнення до адмінвідповідальності має бути конкретизований у протоколі та відповідати диспозиції ст. 185-3 КУпАП (Апеляційний суд Запорізької області від 6 грудня 2016р. у справі No. 316/1216/16-п) [Manifestation of the Disregard for the Court in the Case of Bringing to Administrative Responsibility Must Be Made Concrete in the Protocol and Comply with Article 185-3 of the Administrative Offences Code of Ukraine (Court of Appeal of the Zaporizhia Oblast of 6 December 2016 in the case No. 316/1216/16-p)] (Oct. 10, 2018), available at https://protocol.ua/ua/sud_proyav_nepovagi_do_sudu_u_vipadku_prityagnennya_do_adminivpidpovidalnosti_mae_buti/.

⁴⁴ Суддя оштрафував адвоката за зйомку на засіданні // Українські Новини. 05.10.2016 [The Judge Fined the Lawyer for Filming at the Court Hearing, Ukrainian News, 5 October 2016] (Oct. 10, 2018), available at <https://ukranews.com/ua/news/452930-suddya-oshtrafuvav-advokata-za-zyomku-na-zasidanni>.

⁴⁵ Слободян І. Голова ВКДКА Олександр Дроздов: Судді створюють небезпечну практику, яка може вдарити по їхньому авторитету і гарантіям // Закон і Бізнес. 21.07–27.07.2018. No. 29(1379) [Ivan Slobodian, Chairman of the HQDBC Oleksandr Drozdov: The Judges Create a Dangerous Practice That Can Influence on Their Authority and Guarantees, Law and Business, 21–27 July 2018, No. 29(1379)] (Oct. 10, 2018), available at <http://vkdka.org/golova-vkdka-oleksandr-drozdov-suddi-stvoryuyut-nebezpechnu-praktiku-yaka-mozhe-vdariti-po-jihnomu-avtoritetu-i-garantiyam/>.

⁴⁶ Гресь О. Сім раз подумай, один – поскаржзся // Закон і Бізнес. 31.03–06.04.2018. No. 13(1363) [Oleksandra Hres, Think Seven Times, Complain Once, Law and Business, 31 March – 6 April 2018, No. 13(1363)] (Oct. 10, 2018), available at <http://vkdka.org/sim-raziv-podumaj-odin-poskarzhzhsya/>.

In decisions of the European Court of Human Rights (ECHR) in cases *Kornev and Karpenko v. Ukraine*⁴⁷ and *Gurepka v. Ukraine*⁴⁸ it was stated that considering the severity of the punishment for the offense provided for by Article 185-3 of the Administrative Offences Code of Ukraine, it is not of no importance, it is criminal, in essence, and subject to the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

One should agree with the position that the legal regulation of the institution of contempt of court in each state, including in Ukraine, must be implemented taking into account the provisions specified in the ECHR judgment on the case *The Sunday Times v. The United Kingdom*,⁴⁹ where it is stated that

...the aim of the law of contempt is not to make the judiciary immune from all criticism. Thus, it was hardly necessary to state in this connection, as does the judgment, that "the courts cannot operate in a vacuum."⁵⁰

The ECHR has repeatedly pointed out that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the Convention) is applied to the lawyer's professional speeches which may be of a keen and even grotesque character with the aim of intensifying the figurativeness of his language and influence on the judges, but they should not cross the bounds of direct insults. The ECHR considers the conscientiousness of intentions, which has to be taken into account in evaluation of the facts of violation of the right to freedom of speech, as an important feature that makes it possible to separate permissible criticisms from inadmissible. In the case of *Čeferin v. Slovenia*, the ECHR recognized a fine for a lawyer for contempt of court by violation of the freedom of expression, and once again expressed the position on the necessity of maintaining a balance between protecting the authority of the judiciary and protecting freedom of speech. The ECHR drew attention to the fact that non-government officials, including lawyers, have a broader right to freedom of expression than civil servants (judges and prosecutors).

⁴⁷ Справа «Корнев і Карпенко проти України» (Заява No. 17444/04) від 21.01.2011 [*Kornev and Karpenko v. Ukraine*, Judgment, No. 17444/04, 21 January 2011] (Oct. 10, 2018), available at http://zakon2.rada.gov.ua/laws/show/974_637.

⁴⁸ Справа «Гурепка проти України (No. 2)» (Заява No. 38789/04) від 08.07.2010 [*Gurepka v. Ukraine (No. 2)*, Judgment, No. 38789/04, 8 July 2010] (Oct. 10, 2018), available at http://zakon5.rada.gov.ua/laws/show/974_565.

⁴⁹ *The Sunday Times v. The United Kingdom*, Judgment, No. 6538/74, 26 April 1979.

⁵⁰ Cited by Заборовский В.В. Значение правоприменительной практики Европейского суда по правам человека в аспекте реализации принципа пропорциональности в отношениях между адвокатом и судом // Журнал международного права и международных отношений. 2016. No. 3–4. С. 17–21 [Viktor V. Zaborovsky, *The Significance of the Law-Enforcement Practice of the European Court of Human Rights as Regards Implementation of the Principle of Proportionality in the Relationship Between a Lawyer and a Court*, 3–4 Journal of International Law and International Relations 17 (2016)].

At the same time, the lawyer, taking into account his legal knowledge, should be more restrained in his right than a simple civil servant.⁵¹

So, proceeding from the above, on the conclusion can be made that the necessity of the legal implementation of the rules that provided the proper balance between the requirements to remain respectful to the authority of the judiciary and the necessity for the lawyer, within the limits of his powers, to perform the duties of the defender (representative) in the case. The necessity of observing this balance by all participants in the proceedings, including judges, should be considered as one of the main conditions for the proper administration of justice.

There are many other issues related to the ethical aspects of the relationship between participants in the trial, including lawyers and judges. But within the scope of this article we are only able to focus on some of them, which, based on the subject of our study, deserve the greatest attention.

Recently, due to the legal and judicial reform in Ukraine and the modernization of the judiciary, there have been numerous cases of criticism of court decisions by lawyers, including in the media. The desire to point out the weaknesses of the judiciary, the desire to improve the justice system, as well as possible other motives (the impact on the court of higher authority, PR for the lawyer) may be grounds for such criticism. However, most lawyers are well aware of the inadmissibility of commenting lawsuits before their entry into force. In connection with this, we consider it necessary to supplement the Advocate's Rules of Ethics of Ukraine with the following provisions:

The lawyer should always have due respect to the court. In legal proceedings, the lawyer must cooperate fully with the court in order to promote the interests of justice. A lawyer shall not publish in the press, social networks or otherwise publicly to give assessment of a court's activity in a matter under consideration or assessment of a court decision that has been issued but has not yet entered into force. Court decisions that have entered into force may be commented on by lawyers, but not in such a way that such comments could be viewed by society as a discrediting the judiciary.

Such steps will allow lawyers to conduct a civilized dialogue with the judicial system on the changes that they consider necessary to carry out in the court system itself.

1.2. Assistance in the Use of Limited Court Resources

In the *Main-Road Property Group Pty* case, the Victorian Court of Appeal pointed out that, as a participant of the legal proceedings, a lawyer has to have obligations

⁵¹ *Čeferin v. Slovenia*, Judgment, No. 40975/08, 16 January 2018 (Oct. 10, 2018), available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-180286%22%7D>.

to assist the court in the effective administration of justice. The court indicated the existence of significant public interest in the timely resolution of proceedings and the role of lawyer in promoting the most effective use of limited court resources. The court established that

the legitimate interests of the client are usually best served by the concise and efficient presentation of the real issues in the case. Nevertheless, some clients have an interest in protracted legal proceedings. This cannot be given effect by lawyers if they are to act consistently with their duty the court.

The Court in *A Team* also observed that the obligation is now more important than ever “because of the complexity and increased length of litigation in this age.” Without this assistance from practitioners, “the courts are unlikely to succeed in their endeavour to administer justice in a timely and efficient manner.”⁵²

One of the peculiarities of judicial reform in Ukraine in late 2017 was the introduction of a new institution of inadmissibility of abuse of procedural rights. In accordance with the new legislation, the court is obliged to take measures to prevent the abuse of the procedural rights of the parties. In the case of abuse of procedural rights by a participant in court proceedings, a court shall apply measures established by law to such participant, among which the following measures of procedural compulsion may be taken: warning; removal from the courtroom; temporary withdraw of evidences for investigation by the court; the calling of a witness (only for a civil process); a fine (Art. 44 of the Civil Procedure Code of Ukraine, Art. 43 of the Commercial Procedure Code of Ukraine, and Art. 45 of the Code of Administrative Court Procedure of Ukraine). The above has the risk of stimulating another form of abuse of procedural law, i.e. from the side of the court, because it appears to avoid the consideration of “inconvenient” procedural issues and has an influence on the lawyers.

Abuse of rights is, firstly, only legal from the formal point of view; secondly, a casuistic way of clarifying the meaning of the term “unethical means” in the law does not cover all possible forms abuse; thirdly, the content of the concept of “obstruction of the lawful implementation of the process...” is not disclosed. From the point of view of the said shortcomings of the formulations, there is every reason to believe that, in the event of a dispute regarding the unethical and unlawful nature of the lawyer’s actions, the arguments of the latter regarding the correctness of his position with reference to legal norms in which his rights are guaranteed may be outweighed. In addition, concepts used by the national lawmaker, i.e. “honesty” and “abuse of rights,” are not such that they do not require additional interpretation, on

⁵² Marilyn Warren, *The Duty Owed to the Court – Sometimes Forgotten*, Judicial Conference of Australia Colloquium, Melbourne, 9 October 2009 (Oct. 10, 2018), available at <http://jca.asn.au/wp-content/uploads/2013/11/2009OriginalKeynoteAddress.pdf>.

the contrary, they are multi-valued appraisal concepts. That is why, as it is rightly pointed out in the legal literature,

for the correct use, it is necessary for the legislator to specify their content, taking into account existing legal practice and the relevant scientific researches.⁵³

It is necessary to point out that the legislation and doctrine of other developed countries of the world, does not fully solve the said problem either.⁵⁴

Lawyers have to be prepared to deal with various prejudices, for example with those prejudices affecting the exercise of the rights granted by the Convention, including the right to a fair trial. Attorneys have to convince judges to respond appropriately to such prejudices and, in accordance with the Convention and case law, whenever a lawyer makes reasoned claims under the Convention. Lawyers should keep an eye on the professional conduct of a judge in order to make sure of his impartiality and should express their opinion when they believe that this fundamental principle of the right to a fair trial is being violated.⁵⁵

In our opinion, being an active participant in the process of law enforcement, and occupying an independent place in the mechanism of justice, the advocacy should perform an important function of professional and legal control over the provision of the constitutional rights and freedoms of the human being.⁵⁶ This thesis is confirmed also by international documents regulating the Bar Association sphere of activity. The Charter of Core Principles of the European Legal Profession defines the role of a lawyer as an indispensable participant of a fair trial, which not only serves the interests and protects the rights of his client, but also performs functions that include prevention of conflicts, providing conflict resolution in the further development of the law, as well as protection of freedom, justice and the rule of law.⁵⁷

⁵³ Полянський Т.Т. Зловживання процесуальними правами: юридичні засоби попередження та можливості їх удосконалення // Вісник Національної академії правових наук України. 2013. No. 3(74). С. 37 [Taras T. Polyansky, *Abuse of Procedural Rights: Legal Means of Notification and Possibilities for Their Improvement*, 3(74) Bulletin of the National Academy of Legal Sciences of Ukraine 31, 37 (2013)].

⁵⁴ Аболонин В.О. Злоупотребление правом на иск в гражданском процессе Германии: Монография [Vadim O. Abolonin, *Abuse of the Right to Sue in Civil Procedure in Germany: Monograph*] (Moscow: Wolters Kluwer, 2009).

⁵⁵ Ruth van der Pol, *supra* note 1.

⁵⁶ Вільчик Т.Б. Адвокатура як інститут реалізації права на правову допомогу: порівняльно-правовий аналіз законодавства країн Європейського Союзу та України: Докт. дисс. [Tetyana V. Vilchuk, *Advocacy as an Institution for the Implementation of the Right to Legal Assistance: Comparative Legal Analysis of the Legislation of the Countries of the European Union and Ukraine: A Thesis for a Doctor's of Law Degree*] (Kharkiv, 2016).

⁵⁷ Charter of Core Principles of the European Legal Profession, adopted at the CCBE Plenary Session held on 24 November 2006, at 7–8 (Oct. 10, 2018), available at https://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf.

Ultimately, the lawyer is bound to assist the court in any way to ensure that it reaches a righteous, judicious and just decision. The lawyer's overriding and primary duty is to the court, which requires the lawyer to exercise proper administration of justice.

1.3. The Inadmissibility of Abuse of the Process and Misleading of the Court

If civility maintains the dignity of the profession and contributes to the continuation of a just society, to uncivil conduct, in contrast, impedes the goal of efficient conflict resolution, in turn, delaying or even denying justice.⁵⁸

From the point of view of the judge, a lawyer's reputation for honesty is a powerful weapon in his favor.⁵⁹

The main duties of a lawyer in court are also honesty and professionalism. Lawyers must do their utmost to promote the correct application of the law in the case. They should be frank in their answers and disclosure of information before a court, they should not mislead the court, not abuse the process or deliberately delay it. Sometimes, in practice, clients are interested in delaying litigation, but such a desire should not be fulfilled by lawyers for whom their duties to the court are of paramount importance. In the *Re Gruzman* case, it was pointed out that the duty required the lawyers to act honestly, frankly and competently, give independent judgment in litigation, and that their behavior should not be such that it seemed that there was abuse of the process. It is important to note that lawyers should not mislead the court, but should be frank in their answers and disclosure of information to the court. In short, lawyers ought to do everything they can to ensure that the law is applied correctly.⁶⁰

The duty of a lawyer is to act within the law, helping the court to reach a proper resolution of the dispute within reasonable time and in an efficient manner. The Victorian Court of Appeal pointed out that as a participant of legal proceedings, a lawyer should have an obligation to assist the Court in the effective administration of justice. The duty of the lawyer not to mislead the court and not to give up "an unfounded shadow on the witness" is part of his duty to the court.⁶¹

It is said in Western Australian Barristers' Rules that

A barrister has an overriding duty to the Court to act with independence in the interests of the administration of justice.

⁵⁸ Kara A. Nagorney, *A Noble Profession? A Discussion of Civility Among Lawyers*, 12(4) *Georgetown Journal of Legal Ethics* 815, 816-817 (1999), as cited in *R. v. Felderhof*, *supra* note 28, para. 83.

⁵⁹ James Douglas, *Lawyers' Duties to the Court*, Papua New Guinea Law Society, 4 September 2013 (Oct. 10, 2018), available at <http://www5.austlii.edu.au/au/journals/QldJSchol/2013/61.pdf>.

⁶⁰ *Re Gruzman; ex parte the Prothonotary* [1968] 70 S.R. (N.S.W.) 316, at 323 (Oct. 10, 2018), available at <https://nswlr.com.au/view-pdf/70-SR-NSW-316>.

⁶¹ *Rees v. Bailey Aluminium Products Pty Ltd.* [2008] V.S.C.A. 244; 21 V.R. 478 (Oct. 10, 2018), available at <https://jade.barnet.com.au/summary/mnc/2008/VSCA/244>.

A barrister must not deceive or knowingly or recklessly mislead the Court.

A barrister must take all necessary steps to correct any misleading statement made by the barrister to a court as soon as possible after the barrister becomes aware that the statement was misleading.⁶²

The American Bar Association, in recommending model legal ethics rules in 1983, said lawyers should not expose lies by their clients in most out-of-court contexts, such as business transactions. But in court proceedings, the American Bar Association said, confidentiality must yield to lawyers' duty not to lie or knowingly let their clients lie to judges.⁶³

Under the American Bar Association Model Rules of Professional Conduct the lawyer should first try to withdraw from the case. If the judge will not permit that, and the attorney believes the client has just committed perjury or is about to do so, the lawyer should inform the judge.⁶⁴

At the same time, according to Allan C. Hutchinson,

in the adversarial system, although deception is prohibited, there is a thin line between a commitment to deceive the other side and an unwillingness to help it.⁶⁵

On the same point, Robert Bell and Caroline Abela argued that, while a lawyer does not need to assist an adversary in both contested and uncontested cases, he is permitted to be silent on certain matters; but he is not permitted to actively mislead the court.⁶⁶

Nevertheless, it is very difficult if not next to impossible to draw a line on what are permissible and impermissible mistakes which may be taken advantage of by the lawyer when committed by his opponent:

The general understanding in the adversarial system is that lawyers do promote their clients' interests with the "maximum zeal" permitted by law, and are morally responsible neither for the ends pursued by their clients nor the means of pursuing those ends, provided both are lawful.⁶⁷

⁶² Western Australian Barristers' Rules, *supra* note 16, paras. 25–27.

⁶³ Stuart Taylor Jr., *Legal Community and Top Court Debate Lawyer's Duty When Clients Lie*, The New York Times, 5 May 1985 (Oct. 10, 2018), available at <https://www.nytimes.com/1985/05/05/us/legal-community-and-top-court-debate-lawyer-s-duty-when-clients-lie.html>.

⁶⁴ American Bar Association, Model Rules of Professional Conduct, adopted by the ABA House of Delegates on 2 August 1983 (Oct. 10, 2018), available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

⁶⁵ Allan C. Hutchinson, *Legal Ethics and Professional Responsibility* 6 (Toronto: Irwin Law, 1999).

⁶⁶ Bell & Abela, *supra* note 13.

⁶⁷ Michael Wilson et al., *Stranded Between Partisanship and the Truth?: A Comparative Analysis of Legal Ethics in the Adversarial and Inquisitorial Systems of Justice*, 29(2) Melbourne University Law Review 448, 452 (2005).

Sometimes it whether you should disclose prior convictions of your client unknown to the prosecution becomes an issue. As a general principle, defense counsel owe no duty to disclose that information and should not do so unless instructed by a client who fully understands the consequences of the proposed disclosure. You are not entitled, however, to mislead the court by, for example, informing it that your client has no convictions when the client has been convicted previously.⁶⁸

Currently, more and more clients, as well as lawyers, are punished for the improper behavior of lawyers. Like a glaring offer to give false testimony, the conscious creation of a misconception about the fact is another way for a lawyer to mislead the court. When a lawyer knows that a court acts on the basis of an erroneous assumption and actively supports a false presentation, the lawyer is guilty of misleading the court.⁶⁹

The duty to the court may be summarized to include candor, honesty and fairness. Therefore, it is quite unprofessional and unethical for the lawyer to mislead the court by using deliberate falsehoods. Likewise, the lawyer is also enjoined to uphold justice and to protect the court's integrity.⁷⁰

Lord Denning rightly emphasized that it is a mistake to suppose that a lawyer is the megaphone of his client to say what he wants.⁷¹

A lawyer is required to exercise independent judgment as an intermediary between the client and the decision maker, i.e. the court, and he is also personally responsible for the conduct and presentation of a case in court.⁷²

Paragraph 5.3 of the Bangalore Principles of Judicial Conduct states that

A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.⁷³

The Code of Conduct for Lawyers in the European Union states that the lawyer must maintain due respect and civility in relation to the court.⁷⁴

⁶⁸ James Douglas, *Lawyers' Duties to the Court*, *supra* note 59.

⁶⁹ Bell & Abela, *supra* note 13.

⁷⁰ Stephen Warne, *A New Advocates' Immunity Case*, The Australian Professional Liability Blog, 20 November 2010 (Oct. 10, 2018), available at <http://lawyerslawyer.net/2010/11/20/a>.

⁷¹ *Arthur J.S. Hall v. Simons* [2002] 1 A.C. 615. The same statement was also reiterated by Judge Mwalusanya as he then was in the case of *Khasim Hamisi Manywele v. Republic*, High Court of Tanzania at Dodoma, Criminal Appeal No. 39 of 1990 (Unreported).

⁷² Tony Pagone, *Divided Loyalties? The Lawyer's Simultaneous Duty to the Client and the Courts*, Monash Guest Lecture in Ethics, 20 November 2009, at 2, 13 (Oct. 10, 2018), available at <http://worldlii.austlii.edu.au/au/journals/VicJSchol/2009/19.pdf>.

⁷³ Bangalore Principles of Judicial Conduct (2002) (Oct. 10, 2018), available at https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

⁷⁴ Code of Conduct for Lawyers in the European Union, *supra* note 9, para. 4.3.

Therefore, in order to attain the objectives of legal proceedings, both lawyers and judges (as well as other process participants) should treat each other with respect.

1.4. Direction of Clients in Litigation to Act in the Interests of Promoting Public Confidence in the Judiciary and the Administration of Justice

Robert Bell and Caroline Abela consider that, along with other duties, attorneys should direct clients in litigations to act in a way that promotes public confidence in the administration of justice.⁷⁵ The latter rule is very important for Ukraine today, since its perception by the national legislator will increase the level of public trust in the judiciary.

A position on the role of a lawyer in the formation of public trust in the judiciary was expressed by the High Court of Australia in the judgment in the case *Giannarelli v. Wraith*: the efficiency of the administration of justice and the degree of public trust in the judiciary depend, to a great extent, on the honesty and credibility of the lawyers practicing in court. Their duty of honesty and justice is the quintessence of the role of the lawyer as a party to the lawsuit; the court and the public rely on it, regardless of whether such lawyer has any experience or not.⁷⁶

In our opinion, it is advisable to amend the Advocate's Rules of Ethics of Ukraine to state that an attorney must not only personally show respect for the court, but also guide his client to do the same, directing him to promote public trust in the judiciary, which is very relevant in modern times in view of the stage of development of the national legal system.

1.5. Attorney's Attention to a Judge's Mistakes Made During a Trial

The well-known Latin saying, "*errare humanum est*" (to err is human), is also true of judges in the administration of justice. The reasons for judges' mistakes, however, may differ⁷⁷ (but this issue goes beyond our research).

Edward F. Barrett writes:

We have no archangel on the bench. The jury is not drawn from a *venire* of Cherubim or Seraphim. The litigants, their lawyers and their witnesses are not saints. The trial of a lawsuit is a very human thing.⁷⁸

⁷⁵ Bell & Abela, *supra* note 13.

⁷⁶ *Giannarelli v. Wraith*, *supra* note 20.

⁷⁷ For more on this, see *Куйбіда Р. Суддівська помилка: критерії розмежування зловживання (свавілля), недбалості та добросовісної поведінки: Аналітичний звіт, підготовлений в рамках Проекту Ради Європи «Підтримка реформи системи суддівської відповідальності в Україні» [Roman Kuibida, *Judicial Mistake: Criteria for Delimiting Abuse (Tyranny), Negligence and Good Faith Conduct: Analytical Report Prepared Within the Framework of the Council of Europe Project "Support for the Reform of the Judiciary System in Ukraine"*] 22 (Kyiv, 2015).*

⁷⁸ Edward F. Barrett, *The Adversary System and the Ethics of Advocacy*, 37(4) *Notre Dame Law Review* 479, 479 (1962).

Lawyers should assist the court in the administration of fair justice since, without such assistance, the courts are unlikely to be able administer it timely and effectively. Therefore, lawyers and judges should cooperate in order to ensure the fair administration of justice, which brings us onto the next duty of a lawyer: he must draw the judge's attention to mistakes that he may have made.

There is also a more categorical point of view on this:

The first and most important thing justifying the existence of the Institution of Advocacy is the maximum level of effort made to avoid miscarriage of justice.⁷⁹

In judicial practice, there are cases when an elementary mistake by a lawyer causes the same elementary miscarriage of justice.⁸⁰

A judicial decision made with an obvious mistake that should not have been made by a person with the high status of a judge who has conscientious attitude towards the performance of his duties, may be considered to have been made as a result of negligence. The judge has no malicious intention to make a mistake in such a case or it is, at least, such intent is not obvious. So, some mistakes that, at first glance, are the result of negligence may actually be abusive. For example, the judge deliberately keeps silent about the rule of law, which should have been applied in order to declare a decision unjust but, at the same time, such decision appeared lawful. However, it may be impossible to prove abuse (willfulness) only on the basis of a court decision and case material. If the lawyer has not referred to such a rule of law as a result of ignorance, but the court knows it, but disregards it, it is difficult to prove that the "mistake" was made on purpose. A conscientious judge's mistake occurs in the case when a mistake has been permitted by the court, faithfully fulfilling its obligations.⁸¹

Lawyers should pay attention to the widespread cases of failures by courts to adhere to the practice of the ECHR, especially if it is available in the relevant country's language and even officially published, including such failures which are intentional. Such failure is revealed, for example, when misleading arguments ostensibly adhering to the position of the ECHR are used and are then refuted by the ECHR itself, when false claims are made about other court decisions, etc.

⁷⁹ *Фіолевський Д.П.* Адвокатура: Підручник [Dmitro P. Fiolevsky, *Advocacy: Textbook*] 121 (Kiev: Alerta; Pretsedent, 2006).

⁸⁰ For example, the court dismissed the lawsuit, "since a five-year-old child cannot be responsible for the debts of the father testator." Of course, the lawyer thought the same, but did not pay attention to it. But, having become the owner of the house, the child became simultaneously the successor of the father as a debtor. Cited by *Ромовська З.В.* Суд і адвокат. Проблеми співпраці // *Адвокат*. 2013. No. 1(148). С. 9 [Zorislava V. Romovska, *Court and Lawyer. Problems of Cooperation*, 1(148) Lawyer 6, 9 (2013)].

⁸¹ Kuibida 2015, at 22.

In most cases, proceeding from the interests of his client, the lawyer should pay attention to the judge's mistakes in the court session. But, in some cases, the lawyer must take into account the fact that this could result, for those present, in laughter or other disrespect towards the court and the judge. However, if such mistake was made in the court decision, the lawyer has the right to address to the same in an appeal or cassation appeal. A well-known Ukrainian lawyer gave the following debatable recommendation to younger lawyers:

Do not demonstrate your competence in court if the situation does not require it, and do not show that you know something better than a court.⁸²

If this is not an end in itself, and the client's interests are protected, then why not?

2. Duties of a Lawyer to a Client and Their Relationship with the Duties of a Lawyer to a Court

Lawyers owe clients many duties which overlap and occasionally conflict. The content of the duty to clients comes from a variety of sources, including case law, rules and commentaries, and academic writing.⁸³

Taking into account that the lawyer is a participant in the process of administration of justice and, at the same time, fulfills duties connected with the private interests of his client, there is a need to differentiate between such possible situations when the protection of the interests of a separate individual can conflict with serving the law.

International documents take different approaches to the possibility of a lawyer being in conflict with duties to his client, if the interests of justice so require. For example, the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors points out that

In the case of prosecutors, their duty is to investigate and prosecute all violations of human rights irrespective of who perpetrated them. In turn, lawyers must at all times carry out their work in the interest of their clients.⁸⁴

⁸² Зейкан Я.П. Захист у цивільній справі: науково-практичний коментар [Yaroslav P. Zejkan, *Protection in the Civil Case: Scientific and Practical Commentary*] 69 (Kiev: KNT, 2010).

⁸³ Linda Plumpton & Peter Henein, *A Lawyer's Duties to Clients and Witnesses* (Oct. 10, 2018), available at https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteForCivilityandProfessionalism/Duty_to_Clients.pdf.

⁸⁴ International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: Practitioners Guide No. 1*, at 5 (Oct. 10, 2018), available at <http://www.refworld.org/pdfid/4a7837af2.pdf>.

The Code of Conduct for Lawyers in the European Union points out that

A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend.⁸⁵

In his decision on the *Giannarelli v. Wraith*, Judge Mason pointed out that

The duty to the court is paramount and must be performed, even if the client gives instructions to the contrary.⁸⁶

In the same case, the Judge Wilson said that

counsel could never be in breach of duty to the client by fulfilling the paramount duty.⁸⁷

The problem of the relationship between duties of a lawyer to the court and his client is also widely discussed in contemporary foreign legal literature. In 1967, in the United Kingdom in the case of *Rondel v. Worsley* a decision was made, in which it was pointed out that an attorney had the most important duty to the court, to the standards of his profession, to the public, which often results in conflict with his client's interests.⁸⁸

Lord Reid explained in this case that the lawyer has duty to the court, which is of paramount importance: a lawyer must ignore the most specific instructions of his client if they conflict with his duty to the court. It is a mistake to believe that he is the megaphone of his client, to say what he wants, or his instrument to do what he orders. He is not one of these things. He must be faithful to the highest goal. This is a matter of truth and justice.⁸⁹

Developing this idea, Sir Gerard Brennan points out that in the performance of his professional duties, the lawyer receives not only a benefit but also bears a burden. The benefit is obviously, in particular, the possibility to make a career in law as one of the members of the legal profession. The burden lies in the foundation of the duty of the lawyer to obey the rule of law and assist the court in the administration of justice in accordance with the requirements of the law.⁹⁰

Florentino Marabuto, analyzing the activities of Portuguese lawyers, states:

⁸⁵ Code of Conduct for Lawyers in the European Union, *supra* note 9, para. 1.1.

⁸⁶ *Giannarelli v. Wraith*, *supra* note 20, at 556.

⁸⁷ *Id.* at 572.

⁸⁸ *Rondel v. Worsley* [1967] 3 W.L.R. 1666 (Oct. 10, 2018), available at <http://www.e-lawresources.co.uk/Rondel-v-Worsely.php>.

⁸⁹ *Id.*

⁹⁰ Brennan 2012, at 217.

...first of all, we must serve the interests of justice, as well as the interests of those who have entrusted us with the protection of their rights and freedoms.⁹¹

David Ipp points out that the duties of a lawyer in relation to a court are of primary importance, although there may sometimes be situations in which they are not consistent with the lawyer's duty with respect to his client.⁹²

In his article on lawyer's ethics in Canada, Gavin MacKenzie says that

The duty of a lawyer to a client and the duty of a lawyer to a court are of equal significance: In the United States the duty to the client is generally seen as the lawyer's primary duty, while in Britain the duty to the court is preeminent. In our rules, the two duties are given equal prominence – which may make ethical choices in advocacy more difficult in our jurisdiction.⁹³

Consequently, in the UK, the duty of a lawyer to a court is the dominant duty. As mentioned above, the Australian legislator also has a clear and unambiguous position on the duties of a lawyer to a court and his client.⁹⁴

The opposite opinion is followed by the national legislator. Thus, in Article 8 of the Advocate's Rules of Ethics of Ukraine it is pointed out that "priority of the interests of the client within the limits of legality is a principle the lawyer is obligated to observe in his professional activities" and in Article 43 "Observance of the Principles of the Independence of the Lawyer and the Priority of the Interests of the Client in the Relations of the Lawyer with the Court," the lawyer is advised to consistently observe the principle of priority of the interests of the client before all other interests and considerations connected with the relationship of the lawyer with the court.⁹⁵

For many years, the legislation of Ukraine did not consider advocacy as an integral part of administration of justice and the legal status of a lawyer in court is still not recognized as an assistant of justice. Moreover, sometimes it is believed that when a lawyer performs his duties, he is in opposition to the court. Such a view cannot be considered legitimate, though it has its historical origins. (A detailed analysis of this issue is the focus of our other work.⁹⁶)

⁹¹ Деонтология. Этико-юридические правила адвокатуры (адвокат Флорентино Марабуто) // Адвокат (газета). 2002. No. 11. С. 4 [*Deontology. Ethical and Legal Rules of the Bar (Lawyer Florentino Marabuto)*, 11 Lawyer 4 (2002)].

⁹² Ipp 1998.

⁹³ Gavin MacKenzie, *The Ethics of Advocacy*, 27(2) *The Advocates' Society Journal* 26 (2008).

⁹⁴ Western Australian Barristers' Rules, *supra* note 16, paras. 7–9.

⁹⁵ Advocate's Rules of Ethics, *supra* note 33.

⁹⁶ Вильчик Т.Б. Реализация конституционного права на правовую помощь адвокатуру стран Европейского Союза и Украины: концептуальный анализ: Монография [Tetyana B. Vilchuk, *Realization of the Constitutional Right to Legal Assistance by the Lawyers of the Countries of the European Union and Ukraine: Conceptual Analysis: Monograph*] (Kharkiv: Pravo, 2015).

At the Judicial Conference of Australia Colloquium (Melbourne, 9 October 2009) it was noted that attorneys must fulfill their duty as participants in legal proceedings, including the case when this duty conflicts with their duty to the client. Part of such a lawyer's duty is the necessity to inform the client that it (the duty) has paramount importance for the lawyer.⁹⁷ The latter provision seems very important for practical application. A lawyer informing a client of such duty can prevent many complicated situations between the lawyer and the client.

3. Responsibility of the Lawyer for Violation of His Duties

As it is noted by Peter J. Henning,

A distinction must be drawn between the goal of the judicial system and the broader category of legal representation that incorporates the rules regulating how lawyers represent clients.⁹⁸

The controversial responsibilities of a lawyer concerning a court and his client can result in claims against such lawyer and the possibility of his being brought to justice.

In the legal client-lawyer relationship, the weaker side is the client. For this reason, the legislation of most countries has established special conditions with regard to this relationship, in particular, the possibility that the client, at any time after entering the contract can refuse to exercise its terms and conditions, while the same is not possible for the lawyer, who has duties to comply with all terms of the concluded contract, as well as additional duties (observance of the lawyer-client privilege, professional rules, a prohibition of refusal to continue with case if the lawyer considers the position to be inconsistent and so on), as well as increased liability for the lawyer for non-fulfillment or improper performance of obligations.

Protecting the interests of the client, the attorney stands guard before the interests of law. The legislation of Ukraine establishes a clear boundary between admissible protection and inadmissible violation of official duties. A lawyer is prohibited from entering into an agreement on the provision of legal aid and he is obliged to refuse to execute the contract if the result intended by the client, or the means of achieving it, on which he insists upon, is illegal or contrary to the moral principles of society.⁹⁹

⁹⁷ Marilyn Warren, *The Duty Owed to the Court*, *supra* note 52.

⁹⁸ Peter J. Henning, *Lawyers, Truth, and Honesty in Representing Clients*, 20(1) *Notre Dame Journal of Law, Ethics & Public Policy* 209, 209 (2006).

⁹⁹ Закон України від 05.07.2012 No. 5076-VI «Про адвокатуру та адвокатську діяльність» [Law of Ukraine No. 5076-VI of 5 July 2012 "On Advocacy and Legal Practice"], Art. 28(1)(2) (Oct. 10, 2018), available at <http://zakon.rada.gov.ua/laws/show/5076-17>.

Lawyers cannot act against the will of their client (except when the lawyer is convinced the client is self-incriminating). Recently, a decision by the Supreme Court of Ukraine on inadmissible actions of a lawyer against his client was made.¹⁰⁰

The legislation of the majority of countries provides for the civil and legal liability of lawyers on grounds of improper performance of the duties of a lawyer both in the judicial sphere and in the course of providing them with other professional legal services, having no connection with the conduct of the case in court.

In accordance with the new Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 in the United Kingdom, barristers' activities must be carried out on a contractual basis, and therefore the barrister is liable for a breach of contractual obligations. In addition, the client has the right, through the court, to demand that the guilty lawyer be brought to disciplinary responsibility and charged for all litigation expenses. As to solicitors, besides contractual liability (indemnification), they are charged with liability caused by the confidential nature of their relations with the client. Means of protection establish the right of justice: there is a presumption of "undue influence" from the side of the solicitor on the client.¹⁰¹

The civil-legal liability of the Spanish lawyer in connection with his professional activities is possible for a breach of contractual obligations as a result of neglect, omission or fraudulent acts thereby. Application to the lawyer of civil liability measures is regulated in detail in French legislation. The lawyer's liability in France is foreseen even for minor mistakes. The Law of France No. 71-1130 of 31 December 1971 does not leave any doubts in this regard: members of the Bar Association are responsible for negligence and mistakes made in the performance of their functions (Arts. 17-1 and 4) and the assessment of the lawyer's mistake is conducted by comparing the actions of the lawyer and a model lawyer.¹⁰² Moreover, it does not matter whether the reason for the mistake is the incompetence of the lawyer himself or in the organization of office work and poor control over the work of staff. The size of liability is not limited to the cost of the object of the dispute and can exceed it.

In the United States, where, according to statistics, every fifth lawyer is sued for unfair performance of obligations during a year, the costs of professional liability insurance exceeds all other current expenses of lawyers, except for rent.

¹⁰⁰ In the decision of the Supreme Court of Ukraine concerning inadmissible acts of a lawyer against his client of 21 June 2018 it is noted that the lawyer expressed a position that differs from the position of his client, it is inadmissible. See Верховный Суд признал недопустимыми действия адвоката, выступившего против клиента // Судебно-юридическая газета. 16.07.2018 [The Supreme Court Declared Inadmissible Actions of a Lawyer Who Spoke Against a Client, Judicial and Legal Newspaper, 16 July 2018] (Oct. 10, 2018), available at <https://sud.ua/ru/news/sud-info/121790-verkhovnyy-sud-priznal-nedopustimymi-deystviya-advokata-vystupivshego-protiv-klienta>.

¹⁰¹ The Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 (Oct. 10, 2018), available at <http://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/22.05.18-approved-contractual-terms-for-GDPR-pdf2.pdf>.

¹⁰² Loi n° 71-1130 du 31 décembre 1971, *supra* note 5.

The calculation of the size of the alleged losses is adopted in Anglo-Saxon law, in particular in the United States. Such a system is used in the civil law of France. However, German law permits the possibility of concluding agreements on restriction of the liability of a lawyer for mistakes made in the course of conducting of the case.¹⁰³ In case of violation by lawyer of laws, regulations, or professional norms, he is brought to disciplinary responsibility by a disciplinary board, which are created in each chamber of lawyers.

In accordance with the legislation of Ukraine, the contract on the provision of legal assistance is an arrangement whereby one party (lawyer, advocate's office, advocate association) undertakes to provide protection, representation or other types of legal assistance to the other party (client) on the terms and in the order specified by the contract, and the client undertakes to pay for the provision of legal assistance and the actual costs necessary for the performance of the contract (Art. 1(1)(5) of the Law of Ukraine "On Advocacy and Lawyer Practice"). Maksim Kravchenko rightly observes that, since the law contains obligations, there must be ways to ensure their implementation.¹⁰⁴

Therefore, a contract for the provision of legal aid should provide for the responsibility of the parties for breach of their obligations. Such a rule will balance the position of its strong party – the lawyer – and serve as a guarantee of proper fulfillment of his obligations and the right to adequate legal assistance. It should be taken into consideration that the measures of the material responsibility of lawyers were enshrined still in the in tsarist Russia.¹⁰⁵

A similar rule is provided by Law No. 63-FZ of 31 May 2002 "On Legal Practice and the Bar in the Russian Federation," according to which the essential terms of a lawyer's agreement with the client are, the size and character of the liability of the lawyer (lawyers) who accepted the assignment (Art. 25(4)(5)).¹⁰⁶

In practice, it is not always easy to prove the guilt of a lawyer in violation of obligations under the contract on the provision of legal aid. The grounds for bringing to him to civil-legal liability are varied and give lawyer the possibility to prove the absence of at least one of them. Accordingly, if it is proven that at least one or more

¹⁰³ Loi n° 71-1130 du 31 décembre 1971, *supra* note 5.

¹⁰⁴ *Кравченко М.В. Звільнення адвокатів від цивільно-правової відповідальності за договором про надання правової допомоги // Часопис Київського університету права. 2015. No. 4. С. 188–191 [Maksim V. Kravchenko, Exemption of Lawyers from Civil Liability Under the Agreement on Legal Assistance, 4 Journal of the Kyiv University of Law 188 (2015)].*

¹⁰⁵ Реформы Александра II [*Reforms of Alexander II*] 331 (O.I. Chistyakov & T.E. Novitskaya (comp.), Moscow: Yuridicheskaya literatura, 1998).

¹⁰⁶ Федеральный закон от 31 мая 2002 г. No. 63-ФЗ «Об адвокатской деятельности и адвокатуре в Российской Федерации» [Federal Law No. 63-FZ of 31 May 2002. On Legal Practice and Advocacy in the Russian Federation] (Oct. 10, 2018), available at http://www.consultant.ru/document/cons_doc_LAW_36945/.

conditions for civil liability are lacking, it cannot hold legally.¹⁰⁷ Specifically, unless otherwise provided by law or a contract, the absence of the debtor's guilt discharges him from liability for breach of obligation. Significant in this context is the case of the disciplinary chamber of the Odessa Regional Qualification and Disciplinary Bar Commission, where it is established that the lawyer received from the defendant, who was in custody, information on a place where money could be found in his apartment and offered such money as a fee. The money was then brought to the cash desk, part of it was written off for the work performed, and part of it was subsequently withdrawn by the prosecutor's office. In fact, the lawyer inflicted damages to the client without justification for an encroachment on money that was not covered by the amount of work performed. However, the lawyer has shown that this amount of money was required as payment and was justified. The lawyer only received a warning.¹⁰⁸

According to the analysis of the practice of the work of the HQDBC, the main complaints filed for the activities of lawyers are complaints on the failure of the lawyer to perform their professional duties, for receiving a fee without providing legal services or for providing an improper quantity or quality of services, for failure perform professional duties, in particular, failure to attend court sessions, for carrying out investigative actions and unworthy conduct in court, etc. In practice, claims often arise regarding the reimbursement of the clients of lawyer fees that were not worked for. As pointed out by the former chairman of the HQDBC, Valentin Zagariya,

we are not a court, we cannot interfere in the civil law relationship between a client and a lawyer. As a rule, we refuse to satisfy such complaints.¹⁰⁹

In our opinion, the Law of Ukraine "On Advocacy and Legal Practice" should consolidate not only norms of the corporate (disciplinary) but also civil-legal (property) responsibility of the lawyer. The consolidation of such responsibility of lawyers will help to strengthen the guarantees of individuals when implementing their constitutional right to legal assistance and increasing of the quality of the latter.

Lawyers' liability, in conjunction with lawyers' professional liability insurance, is the best guarantor of rights for citizens and legal entities who seek legal counsel for legal assistance.

¹⁰⁷ Kravchenko 2015.

¹⁰⁸ Рішення дисциплінарної палати Одеської обласної кваліфікаційно-дисциплінарної комісії адвокатури від 4 лютого 1999 р. // Адвокат. 2000. No. 1. С. 52 [Decisions of the Odessa Regional Qualification and Disciplinary Bar Commission of 4 February 1999, 1 Lawyer 52 (2000)].

¹⁰⁹ *Kim Ю. Голова ВКДКА Валентин Загарія: Фактично ВКДКА формує практику правозастосування Правил адвокатської етики // Закон і Бізнес. 12.10–18.10.2013. No. 41(1131) [Yuliya Kim, *Chairman of the HQDBC, Valentin Zagariya: In fact, the Higher QDCA of Ukraine Forms Practice of Law Enforcement of the Rules of Advocacy Ethics*, Law and Business, 12–18 October 2013, No. 41(1131)] (Oct. 10, 2018), available at http://zib.com.ua/ua/42755-valentin_zagariya_faktichno_vkdkka_formue_praktiku_pravozasto.html.*

In the Code of Conduct for Lawyers in the European Union, it is stated that

Lawyers shall be insured at all times against claims based on professional negligence.¹¹⁰

In Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to Facilitate Practice of the Profession of Lawyer on a Permanent Basis in a Member State Other Than That in Which the Qualification Was Obtained on an on-going basis, it is noted that, irrespective of the rules of professional ethics to which a lawyer is subject in his own country, he is obliged to follow the rules of the country in which he decided to practice.¹¹¹ The Directive contains the following provision:

The host Member State may require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his home-country professional title shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.¹¹²

Today, professional liability insurance is one of the international standards for advocacy, which is provided for in the legislation of many countries of the world.

Thus, under the system of professional liability insurance for German lawyers, individual insurance of lawyers is provided for by private insurance organizations.¹¹³ The Law of France "On the Organization of the Profession of Lawyer" from 1991 also provides for the compulsory insurance of his professional civil liability. And

¹¹⁰ Code of Conduct for Lawyers in the European Union, *supra* note 9, para. 3.9.1.

¹¹¹ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to Facilitate Practice of the Profession of Lawyer on a Permanent Basis in a Member State Other Than That in Which the Qualification Was Obtained, 1998 O.J. (L 77) 36.

¹¹² *Id.* Art. 6(3).

¹¹³ In the 60s of the last century, German scholars thoroughly investigated the lawyer's contract, including the terms of civil legal liability of a lawyer to a client, possible losses, signs of causation, etc. See, e.g., Rudiger Boergen, *Die vertragliche Haftung des Rechtsanwalts* (Berlin: Duncker & Humblot, 1968).

the insurance contract can be concluded by a specific lawyer, group of lawyers or a lawyer.¹¹⁴ In the United States, each of the 52 states has its own insurance system, with individual insurance prevailing.¹¹⁵

The position that a lawyer should be insured against a claim in connection with a charge for improper performance of duties or for other acts committed by him in the process of a case consideration in a court, has been made in a number of court decisions (e.g. *Giannarelli v. Wraith* and *D'Orta-Ekenaike v. Victoria Legal Aid*).

According to the judgment of the ECHR in the *Graziani-Weiss v. Austria* case, compulsory insurance of liability of attorneys is considered non-negotiable in Strasbourg. Although the case itself does not directly concern the status of a lawyer, the following conclusion deserves attention:

Before being admitted to practise, all lawyers shall be required to furnish proof to the Executive Committee of the Bar Association that they have taken out civil-liability insurance with an insurance company authorised to carry on business in Austria to cover any claims for damages that may be brought against them as a result of their professional activities. They shall maintain the insurance cover throughout the duration of their professional activities and shall furnish proof thereof to the Bar Association on request.¹¹⁶

Today, in Ukraine there is no law that directly affirms the insurance of professional activity of a lawyer in the form of voluntary or compulsory insurance. At the same time, in the Law of Ukraine "On Insurance," the list of forms of voluntary insurance is not exhaustive. This gives the theoretical possibility to speak about the insurance of professional liability of a lawyer. The necessity for this is justified as the presence of the interests of the client, who will be able to receive full reimbursement of the losses caused to him as a result of improper work of the lawyer and the lawyer as it should make easy the burden of possible property liability. The size of insurance payments for lawyers may depend, for example, on the level of their qualifications. Thus, French lawyers are obliged to undergo a refresher course and receive a certificate once every five years, and attorneys who do not have such certificates have to pay higher salaries (as compared with colleagues who have increased their qualifications) to insure their professional liability.¹¹⁷

¹¹⁴ Loi n° 71-1130 du 31 décembre 1971, *supra* note 5.

¹¹⁵ Стрэнг Р. Практика страхования профессиональной ответственности адвокатов в США // Вестник адвокатской палаты Иркутской области. 2006. No. 10. С. 20–24 [Robert Strang, *Practice of Insurance Professional Liability of Lawyers in the USA*, 10 Journal of the Bar Chamber of the Irkutsk Region 20 (2006)].

¹¹⁶ *Graziani-Weiss v. Austria*, Judgment, No. 31950/06, 18 October 2011 (Oct. 10, 2018), available at http://www.menschenrechte.ac.at/orig/11_5/Graziani-Weiss.pdf.

¹¹⁷ Vilchuk 2016, at 304–305.

Among the risks that ought to be insured are: unintentional professional mistakes made during the performance of official duties; misinterpretation of legislation; failure to meet deadlines for filing complaints; essential errors during the registration or preparation of documents; failure to notify the client of the consequences of legal actions; unintentionally disclosing data that became known in connection with professional activity, including abdication of powers or dismissal.

The lawyer's duties as to the client should include providing assistance to the client in any lawful way and taking legal action to protect his interests. In this case, the lawyer's duty is to protect only the legitimate interests of the client (Art. 1 of the Law of Ukraine "On Advocacy and Legal Practice").

What should be understood as the legitimate interest of the accused? In the most general form, the defendant's legitimate interest consists primarily of being defended against the charge brought against him. In the late 19th century, Evgeny Vaskovsky wrote:

Every defendant is interested in being justified and avoiding of punishment.¹¹⁸

In modern criminal and procedural literature, the view that the interest of the accused can be both legal and illegal is shared by many authors.¹¹⁹

At the same time, some authors proceed from the premise that legitimate interest does not contradict the law, and is supported and protected by law.¹²⁰ Others consider that interest expressed in subjective law is legitimate.¹²¹ According to Mikhail Strogovich, the legitimate interest of the accused is an interest protected by legal means.¹²²

¹¹⁸ *Васьковский Е.В.* Организация адвокатуры: Историко-догматическое исследование. В 2 ч. Ч. 1 [Evgeny V. Vaskovsky, *Organization of the Advocacy: Historical and Dogmatic Research. In 2 parts. Part 1*] 294 (St. Petersburg: P.P. Soykin's Printing House, 1893).

¹¹⁹ *Смолькова И.В., Мазюк Р.В.* Законные, незаконные и процессуальные интересы обвиняемого в российском уголовном судопроизводстве // Криминологический журнал Байкальского государственного университета экономики и права. 2016. Т. 10. No. 1. С. 156–169 [Iraida V. Smolkova & Roman V. Mazyuk, *Legal, Illegal and Procedural Interests of the Accused Person in Russian Criminal Procedure*, 10(1) *Criminology Journal of Baikal National University of Economics and Law* 156 (2016)]; see also *Гладышева О.В.* Теоретические основы обеспечения законных интересов личности в уголовном судопроизводстве [Olga V. Gladysheva, *The Theoretical Basis of Ensuring Legitimate Interests of a Person in Criminal Court Procedure*] (Moscow: Yurlitinform, 2012).

¹²⁰ Вопросы защиты по уголовным делам: Сборник статей [Protection Issues in Criminal Cases: Collection of Articles] 43 (P.S. Elkind (ed.), Leningrad: Leningrad State University, 1967).

¹²¹ *Шадрин В.С.* Обеспечение прав личности при расследовании преступлений [Viktor S. Shadrin, *Ensuring the Rights of a Person in Criminal Investigations*] (Moscow: Yurlitinform, 2000).

¹²² *Строгович М.С.* О правах личности в советском уголовном судопроизводстве // Советское государство и право. 1976. No. 10. С. 73–81 [Mikhail S. Strogovich, *On the Rights of a Person in Soviet Criminal Court Procedure*, 10 *Soviet State and Law* 73 (1976)].

The literature describes the following illegal procedural interests of the accused: “use of false evidence”; “evading appearance before the investigator or the court”; “aspiring to obtain an acquittal, when being guilty, his crime having been fully exposed”; “receiving unreasonable and excessively mild punishment for the committed crime”; “a false denial of the committed crime”;¹²³ “the desire to use justice for slander, condemnation of a person who is knowingly innocent, or revenge for lawful actions”;¹²⁴ “falsely accusing the other party.”¹²⁵

The procedural interests of the accused form a system in which the basic procedural interest is the purposeful attitude of the accused to achieving a final procedural decision in the criminal case. And this attitude is not always limited to the choice between the conviction and acquittal. The procedural interest of the accused can change at various stages of criminal proceedings, or even in the framework of a single stage, depending on the change in the procedural situation in the case and the factors affecting the target setting of the accused.¹²⁶

A client will often provide his lawyer with certain information that is connected with the crime. This information can relate to a committed crime or to a crime that is still in the process preparation. In the case of a committed crime, the lawyer is not required to provide information to law enforcement authorities, despite the fact that this could contribute to the rule of law; otherwise the lawyer will act contrary to the legitimate interests of the client and his defense. In the second case (preparation of a crime) there is a dilemma: on the one hand, the provision of such information will promote the rule of law, but will contradict the interests of the client, discrediting the lawyer in the eyes of the client. In the second case, it appears that a lawyer is required to provide information about a crime that is being prepared, since he is thereby able to prevent its commission and protect the legal interests of others. Restrictions on the rights of citizens, who are potential clients of lawyers, are allowed in cases where their actions are aimed at violating numerous rights and legitimate interests of a wide range of people.¹²⁷

In the legislation of Ukraine, as in most foreign countries, there is a special guarantee of the impossibility of putting pressure on a lawyer and the enforcement of his rights, which prohibits the prosecution of criminal or other liability of a lawyer

¹²³ Цыпкин А.Л. Очерки советского уголовного судопроизводства [Alter L. Tsyppkin, *Essays of Soviet Criminal Court Procedure*] 18 (Saratov: Saratov University Press, 1975).

¹²⁴ Адаменко В.Д. Охрана свобод, прав и интересов обвиняемого [Valery D. Adamenko, *Protection of the Rights, Interests and Freedoms of the Accused*] 171 (Kemerovo: Kuzbassvuzizdat, 2004).

¹²⁵ Шестакова С.Д. Состязательность уголовного процесса [Sophia D. Shestakova, *Adversary Nature of the Criminal Trial*] 119 (St. Petersburg: Yuridichesky tsentr Press, 2001).

¹²⁶ Smolkova & Mazyuk 2016, at 163.

¹²⁷ See Tetyana B. Vilchik, *Legal Professional Privilege: Controversial Implementation Issues in the European Union and Ukraine*, 4 *European Reforms Bulletin* 174 (2015).

or threatens to incur liability in connection with the exercise of the lawyer's activity in accordance with by law (Art. 14(1) of the Law of Ukraine "On Advocacy and Legal Practice").

At the same time, as regards recognition of the immunity of the lawyer from possible responsibility there is ambiguous jurisprudence. Mostly, it is a question of the possible liability of a lawyer for negligence in the performance of his professional duties, permissible both in relation to his duties in relation to the court and in relation to the client.

The doctrine of an advocate's immunity provides an advocate (whether a solicitor or a barrister) with immunity from any claims that may be brought arising out of the advocate's conduct of litigation. In the UK, the doctrine has been abolished.¹²⁸

Absolute immunity in the court work of lawyers never had place in Canada, the United States, or the European Union.¹²⁹ Some states refuse to provide immunity to lawyers. For example, the ECHR made the conclusion that lawyers' immunity no longer is in force in New Zealand (*Lai v. Chamberlains*).¹³⁰ At the same time, some court decisions are resolved in favor of the lawyers and confirm the existence of the immunity of the lawyer. In a case on legal aid (*D'Orta-Ekenaike v. Victoria Legal Aid*), the court not only did not limit the legal sphere of the existence of the immunity of the lawyer, but rather expanded it and established a precedent for its application.¹³¹ On 4 May 2016, in *Attwells v. Jackson Lalic Lawyers Pty Ltd.*, the High Court of Australia confirmed that the doctrine of advocates' immunity applies in Australia, however, the immunity applied only to advice that leads to, or is intimately connected with, the conduct of the case in court.

In a number of decisions of the Lord's Chamber of Great Britain, it was noted that, if the duty of a lawyer in relation to the court is no more than a duplication of his duty to his client, this does not pose any problem for a lawyer: he should simply fulfill his duty. However, where there is a conflict between duties, it is likely that the lawyer will have to make a choice which may result in a decision that conflicts with the wish of his client.¹³²

The possibility of a client filing a complaint to a court regarding the actions of a lawyer may put a lawyer in a difficult position, especially in cases where the extent

¹²⁸ High Court Reaffirms Advocate's Immunity in Australia, Meridian Lawyers (Oct. 10, 2018), available at <https://www.meridianlawyers.com.au/high-court-reaffirms-advocates-immunity-australia/>.

¹²⁹ *Barristers, Barrister's Duties in Court in Halsbury's Laws of England (Fourth Edition 2005 Reissue) Vol. 3(1): Bailment* (LexisNexis, 2005).

¹³⁰ *Chamberlains v. Lai* [2006] N.Z.S.C. 70 (Oct. 10, 2018), available at https://en.wikipedia.org/wiki/Chamberlains_v_Lai.

¹³¹ *D'Orta-Ekenaike v. Victoria Legal Aid*, *supra* note 21.

¹³² *Davies v. Stillman White Foundry Co.*, 163 A.2d 44 (R.I. 1960) (Oct. 10, 2018), available at <https://casetext.com/case/davies-v-stillman-white-foundry-co>; *Swinfen v. Lord Chelmsford* [1860] 5 H & N 890 (Oct. 10, 2018), available at <https://www.studentlawnotes.com/swinfen-v-lord-chelmsford-1860-157-er-1436>.

of his duty to the court may be a matter of disagreement from the side of the client. Thus, the potential for conflict between duties is relevant but far from being the dominant factor in assessing the need for inviolability (immunity) of a lawyer.¹³³

At the same time, there is a need in the guarantees of observance of the rights of the defendant, who, in case of improper qualification of a lawyer or violation of his professional duties, may remain without effective protection of his rights at the fault of a lawyer, for example, when the latter, without any justifiable reasons, did not appear in court for representation of the interests of the client and the court retained the lawsuit without consideration.

Conclusion

Therefore, based on the legal nature of advocacy, the status of a lawyer as a participant in the process and an integral part of the administration of justice, the primary duty of the lawyer is to assist in the administration of justice. A lawyer's duty to the court prevails over his duty to his client since this is of paramount importance for the effective functioning of the judicial system.

Lawyers ought to fulfill their duty as participants in the proceedings, including in the case when this duty conflicts with their duty to the client. A lawyer as an intermediary between a client and a court and is obliged to observe two duties. Furthermore, a lawyer must strictly and independently execute his duty to his client as a means of achieving a balance between conflicting duties.¹³⁴

Nevertheless, the primacy of either duty may depend on the circumstances or context of each case. This is because each duty complements the other as a composite of the general duty to the community or to the public. This explains why MacKenzie argued that a lawyer's duty to his client and duty to the court are equal. In the long run, violating the duty to the court in fact harms a client's interests.¹³⁵

The lawyer, as an intermediary between the client and the court, is obliged to balance the two duties. Moreover, a lawyer has to exercise the duties scrupulously and independently of each other. Nevertheless, there is no doubt that balancing or reconciling the roles of lawyers as agents for clients and the general welfare of the legal system and the public sphere is highly complicated.

Consequently, the specificity and complex character of the duties assigned to the advocacy require the balancing of principles of serving of the lawyer in the interests of the individual client and the interests of society as a whole.

¹³³ *Arthur J.S Hall and Co. v. Simons and Barratt v. Ansell and Others v. Scholfield Roberts and Hill* [2000] U.K.H.L. 38 (20 July 2000) (Oct. 10, 2018), available at <http://www.bailii.org/uk/cases/UKHL/2000/38.html>.

¹³⁴ Robert W. Gordon, *Why Lawyers Can't Just Be Hired Guns* in *Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation* 42 (D.L. Rhode (ed.), Oxford: Oxford University Press, 2000).

¹³⁵ Bell & Abela, *supra* note 13.

It is worthwhile for lawyers to inform clients beforehand that their duty to the court is of paramount importance to the lawyer in order that unexpected situations will not arise for the client in the course of proceedings and in order for the client to understand the limits of the permissible and possible actions of the lawyer. It is important for lawyers, their clients and the public to understand that the impartiality of the court decisions depends on lawyers fulfilling their duties as described above.

There is a clear boundary between permissible and reliable protection of and an unacceptable violation of official duties. An advocate has no right to pursue a case favorable to his client through illegal or immoral means. He should persist only in the lawful interest of the accused, which is that, in the course of judicial consideration, all the circumstances favorable to him were comprehensively, fully and objectively investigated and he was given the opportunity, with the help of a lawyer, to appeal against the charges and to present the circumstances and proof of his innocence or mitigating factors.

It is necessary for the legislation of Ukraine to provide not only the rules of corporate (disciplinary), but also civil (property) liability of a lawyer, which will contribute to strengthening the guarantees of individuals in the implementation of their constitutional right to legal assistance and improve the quality of the latter, as well as the introduction of the institution of property liability insurance lawyers as a means to minimize the negative consequences for an advocate that has occurred in error and who is obliged to compensate the harm caused to the client.

The conducted comparative analysis of the legislation provides an opportunity to formulate initial provisions that characterize the legal nature of the lawyer's duties to the court and to his client in a new way: the lawyer should assist the court in the cause of justice and efficiently using a limited court resource; lawyers should be frank in their responses and disclosure of evidences before a court; they cannot mislead the court; the lawyer should pay attention to any errors that may be made by the judge; lawyers should inform clients that their duty to the court is of paramount importance; they should direct clients in litigation in order to promote public confidence in the administration of justice. A lawyer should always maintain due respect for the court.

We consider that these introductory provisions are worthy of attention of the domestic legislator and should be taken into account both when introducing changes or adopting new legislation on advocacy and legal practice in Ukraine.

In addition, these initial provisions may be a subject for further discussion by the international community of lawyers and scholars, make a contribution to improving the efficiency of lawyers' activity in court and provide clearer legal regulation of the fulfillment of lawyers' duties, both to courts and to their clients.

References

Barrett E.F. *The Adversary System and the Ethics of Advocacy*, 37(4) Notre Dame Law Review 479 (1962).

Gordon R.W. *Why Lawyers Can't Just Be Hired Guns in Ethics in Practice: Lawyers' Roles, Responsibilities, and Regulation* 42 (D.L. Rhode (ed.), Oxford: Oxford University Press, 2000).

Henning P.J. *Lawyers, Truth, and Honesty in Representing Clients*, 20(1) Notre Dame Journal of Law, Ethics & Public Policy 209 (2006).

Hutchinson A.C. *Legal Ethics and Professional Responsibility* (Toronto: Irwin Law, 1999).

Nagorney K.A. *A Noble Profession? A Discussion of Civility Among Lawyers*, 12(4) Georgetown Journal of Legal Ethics 815 (1999).

Vilchyk T.B. *Legal Professional Privilege: Controversial Implementation Issues in the European Union and Ukraine*, 4 European Reforms Bulletin 174 (2015).

Wilson M. et al. *Stranded Between Partisanship and the Truth?: A Comparative Analysis of Legal Ethics in the Adversarial and Inquisitorial Systems of Justice*, 29(2) Melbourne University Law Review 448 (2005).

Information about the author

Tetyana Vilchyk (Kharkiv, Ukraine) – Professor, Yaroslav Mudryi National Law University (77 Pushkinskaya St., Kharkiv, 61024, Ukraine; e-mail: kafe-agata@i.ua).