

Professional and Psychological Potential of an Attorney: A Look at the Problem

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ABSTRACT

The article investigates the expediency of checking the psychological readiness of a person to independently engage in the practice of law at the stage of access to the profession, as a guarantee of compliance with the high ethical principles of the profession in the future. In this context, the problematic aspects of the procedure for obtaining the status of an attorney are investigated and directions for its improvement are proposed. The article argues for the need to check the psychological and moral and ethical qualities of a person who has expressed a desire to practice law. Special attention is paid to the issue of improving the procedure for qualification assessment of persons applying for the status of an attorney, with the possibility of identifying the psychological and moral and ethical qualities of applicants. The problem of the legislative lack of a mechanism for checking the individual psychological qualities of people who intend to become an attorney is pointed out, which would indicate their professional and psychological readiness to practice law. Suggestions are made to eliminate the problem by improving the norms of the current legislation on the bar and advocacy using positive foreign experience.

Keywords: *attorney, obtaining the status of an attorney, acquisition of right to practice law, professional and psychological potential, legal activity, moral and ethical qualities of a person.*

1. INTRODUCTION

At the present stage of Ukraine's integration into the European community, the issue of reforming the institution of advocacy and, in particular, the procedure for obtaining the status of an attorney is especially relevant. Legislative consolidation of the procedure for obtaining the status of an attorney and requirements for a person applying to practice law is a guarantee of realization of the inalienable right of everyone to receive professional legal assistance [1]. The advocacy is the basis of professional legal assistance, an institution that is responsible for protecting human and civil rights and freedoms, and providing free legal assistance to low-income categories of persons. Taking into account the special legal and social status of the advocacy, it should be noted that the moral, ethical and psychological qualities of representatives of the bar community are no less important than professional ones. This situation is primarily related to the need to achieve public trust [1-2], which is possible only thanks to moral integrity, professionalism in their field, etc.

Taking into account the above, the purpose of the article is to reveal the moral, ethical and psychological determinants of a person who has expressed an intention to practice law in the context of reforming the procedure for obtaining the status of an attorney. It is thanks to moral integrity and compliance with high moral standards that public trust is formed and achieved both for the attorney and for the entire legal corps as a whole.

2. LITERATURE REVIEW

The issue of morality of the Institute of advocacy appears as one of the most important problems, which is concentrated in the center of active discussion by representatives of state authorities, public and scientific community. The need to reform the institute of advocacy and improve the procedure for obtaining the status of an attorney precisely in the context of determining his professional and psychological potential has been repeatedly noted by government officials, scientists, and members of the legal community. At the same time, this is emphasized by some regulatory documents: 1) The Decree of the President of Ukraine

“On the strategy for the development of the justice system and constitutional court proceedings for 2021-2023” contains provisions on the need to review the requirements for education, professional experience and restrictions on access to law, the introduction of a transparent procedure for conducting a single qualification exam, internship of candidates; 2) The Development Strategy of the National Bar Association of Ukraine for 2021-2025, adopted on July 2, 2021, also provides for improving the procedure for access to the profession in general, and, in particular, qualification procedures [4-5].

Outstanding scientists in the field of advocacy have made a significant contribution to the study of problematic aspects of access to the profession of an attorney both in Ukraine and in foreign countries. In particular, scientific positions of Vilchik T., Sokolova A., & Demchyna T., who outlined the procedure and conditions for obtaining the status of an attorney, deserve attention [6]. Also, Bakaianova N. together with colleagues, as part of their scientific research, pay attention to aspects and problems of implementing the right to practice law [7]. Zaborovskiy V., Buletsa S., Bysaga Y., & Manzyuk V. investigate in detail both the procedure for obtaining the status of an attorney by a person, and problematic issues related to the registration of his powers [8].

Grudtsyna L. also points out the need to improve the procedure for access to the profession of an attorney, claiming that by establishing high professional requirements and conditions for granting a person the status of an attorney, the state thereby guarantees any person who applies to an attorney the exercise of their constitutional right to qualified legal assistance [9].

At the same time, despite numerous studies, the professional and psychological potential of a future attorney is still an insufficiently disclosed topic, which inspired our interest in this problem.

3. METHODOLOGY

The complexity and multidimensional nature of any scientific research always leads to the need to study it everywhere through the prism of a system of appropriate tools. Hence, to ensure the comprehensive and complete character of implementation of empirical research, we used both general scientific and special scientific methods and techniques of scientific research [10-12]. So, in particular, the comparative legal method was used when matching and comparing the legislation of Ukraine and other foreign countries. At the same time, in the course of conducting a comparative legal analysis of the requirements for a person who expressed a desire to practice law in foreign countries, in addition to identifying similar and distinctive features, conclusions and certain forecasts for the future were made. At that time, formal-logical and

axiological methods were used to study legislative and normative acts of attorney’s self-government bodies.

In the course of the empirical study, the survey method was used, namely: a survey of persons who have received the status of an attorney and applicants to become an attorney to find out their opinion on the expediency of checking psychological and moral and ethical qualities at the stage of accessing the profession.

The empirical base of the study included 299 people, with 150 attorneys and 149 people who expressed their intention to practice law. Respondents were asked to assess the procedure for access to the profession, express their opinion on the need for psychological fitness testing, and suggest the most effective ways to establish psychological and moral-ethical verification of a person in order to obtain the status of an attorney. Based on the results obtained, the necessity of determining and verifying the psychological, moral and ethical qualities of applicants for attorneys in the context of acquiring the right to practice law has been proposed and argued.

The research corresponds to the topic of the research project of the National University “Odessa Law Academy” “Strategy of integration development of Ukraine: legal and cultural dimension” (State registration number 0116U001842).

Ethical considerations

The study was based on the requirements of the Regulations on ensuring the originality of scientific papers and prevention and detection of academic plagiarism, adopted by the Academic Council of the National University “Odessa Law Academy” on 07.05.2019, which outlines the procedure for conducting similar research from an ethical point of view. Informed consent was obtained from all participants; they were able to withdraw the study at any time.

4. RESULTS

During the survey, we found that 78% of attorneys and 85% of persons who intend to practice law (Figure 1), are not satisfied with the procedure for obtaining the status of an attorney and feel the need to improve it. This position, in our opinion, is due to several factors. Firstly, the imperfection of the procedure for obtaining the status of an attorney. Although the National Bar Association of Ukraine has a well-developed institutional structure, which is quite functional and effective, the qualification and disciplinary processes require significant improvement to ensure that the bar and individual attorneys can work in accordance with international standards. The process of accessing the profession remains weak, somewhat outdated and, as it turned out, is not devoid of deep-rooted corrupt practices that undermine confidence in the profession and weaken its independence.

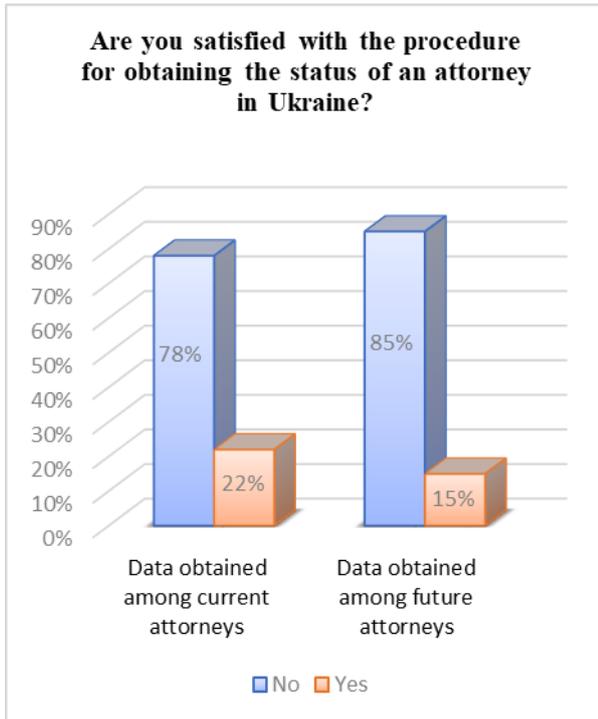


Figure 1 The results of the survey on satisfaction with the procedure for obtaining the status of an attorney in Ukraine

Secondly, the statistics of decisions made by qualification and disciplinary commissions on bringing attorneys to disciplinary responsibility for violating the standards of advocacy in professional and everyday life also give grounds to assert an imperfect procedure for accessing the profession [13]. Examples of violation of the professional conduct rules include the following: groundless delaying of the case to obtain a larger fee, disruption of court sessions, use of deception, making obviously unfulfilled promises, intemperance and incorrectness; tactlessness when interrogating defendants, victims, parties in the process, etc.

Thus, in particular, the Charter of the Council of Bar Associations and legal societies of Europe, the Council of Europe Recommendation on freedom to exercise legal activity (Rec (2000) 21), the European Parliament Resolution on the legal profession and the general interest in the functioning of legal systems, and the UN Basic Principles on the role of lawyers enshrined the basic principles of the legal profession, among which one of the key places is occupied by the principle of a high level of professional competence of representatives of the legal profession.

In support of these positions, Fliazhnikova outlined the professional and personal requirements that an attorney must meet, in particular: "he must be modest and independent, honest and pedantic, truthful and reserved, moderate and selfless [14]. At the same time, the independence of an attorney is one of the main

principles of advocacy. An independent attorney can only be moderate. His moderation should be in everything, but moderation preserves the nobility of the soul, the strength of the mind, gives power over the passions, and all these qualities are necessary him. The dignity of an attorney is the dignity of the entire bar community, so the Bar Council has the right to request an attorney to report on his public actions. An attorney should never forget his oath, which is religion and law for him.

The special importance of these qualities is determined, first of all, by the specifics of the practice of law and the constant psychoemotional load, which requires making balanced and moderate decisions and actions. It should be noted that the requirement to possess certain moral, ethical and psychological qualities has not found its legislative consolidation. Thus, Article 6 of the Law of Ukraine "On the Bar and Practice of Law" contains only the following requirements for acquisition of right to practice: higher legal education; knowledge of the state language; work experience in the field of law for at least two years; passing a qualification exam; passing an internship; taking the oath of an attorney [15]. These requirements are indicated by some regulatory acts of the bar self-government bodies, which regulate in more detail the procedure for admission to the profession. In particular, the preamble to the rules of professional conduct states that the extreme importance of the functional load of the bar requires attorneys to follow high ethical standards of conduct. At the same time, the specifics and complex nature of the duties assigned to the bar make it necessary to balance the principles of serving an attorney to the interests of an individual client and the interests of society as a whole, compliance with the principles of legality and the rule of law [16]. The regulation on the organization and procedure for completing an internship for obtaining a certificate of the right to practice law defines as one of the priority tasks of the internship the development of professional, personal, moral and ethical qualities necessary to protect the interests of individual clients and the interests of society as a whole [17].

So, these regulatory documents provide for the presence of a person's set of certain professional and moral-psychological qualities, establish responsibility for violation of the professional conduct rules, but at the same time do not in any way define the possibility and procedure for checking them even at the stage of access to the profession.

The analysis of the legislation on the bar and and practice of Law of some foreign countries indicates the legislative consolidation of such requirements. Thus, in particular, Article 8 of the Law of the Republic of Lithuania "On the bar" contains provisions on the impeccable reputation of a person applying for the

status of an attorney. In addition, the analysis of judicial practice shows cases of refusal of a person to acquire the status of an attorney due to insufficient high moral reputation. At the same time, the decision of the European Court of human rights in the cases of *Lekaviciene V. Lithuania* [18] and *Jankauskas V. Lithuania* [19] of 27 June 2017 is an example of how the concept of “high reputation of an attorney” is understood.

At the same time, Estonian legislation also states that honesty, high morals and possession of necessary abilities and personal qualities for working as an attorney is a mandatory condition for everyone to access the profession of a lawyer, without specifying what should be understood by these categories.

The Spanish legislator also proceeds from similar positions, fixing the provision on refusal to grant the status of an attorney to a person who is “caught in behavior that discredits his honor and dignity” [20].

These statements do not make up an exhaustive list. However, they comprehensively outline the legally provided approaches for determining professional and psychological requirements for the attorney's personality. In the context of the above, the opinions of individual authors are quite correct (Bondarenko, et al.; Fedorenko, Dotsenko, Okhrimenko, Radchenko, & Gorbenko; Shvets, et al.) [21-23]. They note that professional activity is closely related to the problems of personality psychology, with the peculiarities of the relationship between personality and activity. These features are justified, on the one hand, by the peculiarities of the mental regulation of the behavior of the person himself, the peculiarities of his mental sphere and personal qualities, and on the other – by the specifics of activity, his operational, spatial-temporal and other characteristics. The process of personality development occurs as a result of the interaction of these two factors, the final result of which is formation of stable patterns of behavior in both typical life and professional situations, formation of stable personal qualities that are most adequate for a certain type of activity. At all stages of a person's development as a specialist, he is influenced by objective and subjective factors. If the system of objective professional requirements corresponds to the subjective characteristics and capabilities of a specialist, then this person is recognized as suitable for the professional activity that he has chosen.

Professional aptitude of an individual is usually considered in two aspects [23]. First, as a set of qualities and characteristics of a person that determine the success of forming suitability for a particular activity (type of activity). Secondly, as a set of formed professional knowledge, skills, abilities, as well as psychological, physiological and other qualities and characteristics that ensure effective performance of

professional tasks. From these positions, the characteristics of professional aptitude is determined by the totality of the initial characteristics of a person, and is also formed and developed at the stages of the professional career in the process of activity.

In general, the results of our survey showed that 79% of attorneys and 89% of persons applying for the status of an attorney (Figure 2), support the proposal to check and establish the psychological and moral-ethical qualities of a future attorney at the stage of access to the profession.

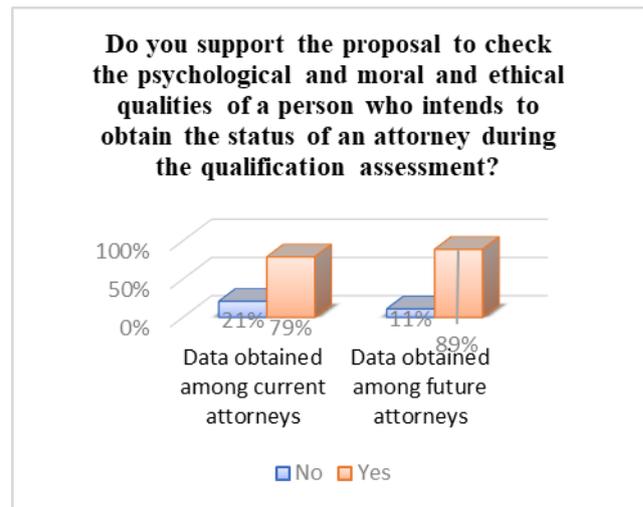


Figure 2 The results of the survey on the proposal to verify the moral-ethical qualities of the future attorney

It is also worth noting that the procedure for obtaining the status of an attorney in Ukraine now provides for 2 ways to check the moral and ethical qualities of a future attorney:

- 1) by conducting an identity check of the applicant by the qualification and disciplinary commissions of the bar before admission to the qualification exam;
- 2) directly during the internship.

Before admission to the qualification exam in order to verify the completeness and reliability of information provided by a person who has expressed a desire to become an attorney, the qualification chamber or a member of the chamber determined by it is entitled to make requests to state authorities, local self-government bodies, their officials, enterprises, institutions and organizations, regardless of the form of ownership and subordination, public associations. This is also done in order to establish the moral and ethical manifestations of the future attorney's personality that took place in the past.

At the same time, during the internship, as a mandatory stage of acquiring the status of an attorney,

the future specialist is able to show his individual and moral and ethical qualities, in particular: perseverance, prudence, integrity, discipline, honesty, culture of behavior, moral level, respect for people; communication skills when working with different categories of citizens, as well as skills in understanding their psychology. First of all, honesty, as Abdunayimova D. notes, is a fundamental beginning of an attorney's professional activity in building relationships between an attorney and colleagues, governmental and non-governmental bodies, and clients. After all, the integrity of an attorney is based on the concept of "Honor", which, in turn, characterizes the ability of a person to give an internal assessment of his behavior and control his actions [24]. These criteria, as well as professional skills, indicate a person's readiness to master the profession of an attorney, realizing its social significance.

It should be noted that despite the need to take into account the moral and ethical qualities of future attorneys at certain stages of access to the profession, there is a need to check their psychological qualities for further conclusion about the suitability and readiness of persons to independently engage in legal activity, since the combination of ethics and psychology in legal activity is natural. The Ukrainian legislator ignored this issue, not establishing a special mechanism for checking and evaluating the psychological qualities of applicants, which affects the level of professional legal assistance in the future.

At the same time, the legislation of some foreign countries provides for a mandatory stage of access to the profession, which is the establishment of a person's psychological aptitude. For example, in Poland, Azerbaijan and other countries, in order to determine the professional aptitude of candidates, an oral interview is conducted after passing a written test. Each candidate is interviewed individually for up to 30 minutes, during which the commission members evaluate the answers as "acceptable" or "unacceptable", and a protocol is drawn up [20].

Taking into account such foreign experience and the results of our survey (Figure 3) it is proposed to provide for mandatory testing of the psychological qualities of future attorneys in the form of passing psychological testing in order to identify the psychological suitability and readiness of a person to practice law even at the stage of the selection exam. It seems appropriate to develop regulations on the organization, procedure for drawing up and methodology for evaluating the results of psychological testing and assign the responsibility for organizing and conducting this testing to the qualification and disciplinary commissions of the bar.

5. CONCLUSIONS

Our analysis gives grounds to state that persons applying for the status of an attorney for independent practice of law should be subject not only to high requirements for their professional knowledge and competencies, but also their moral, ethical and psychological qualities should be taken into account. Every attorney, as a member of the bar community, should increase the prestige of the advocacy by their actions, form respect for the institution of the advocacy among citizens.

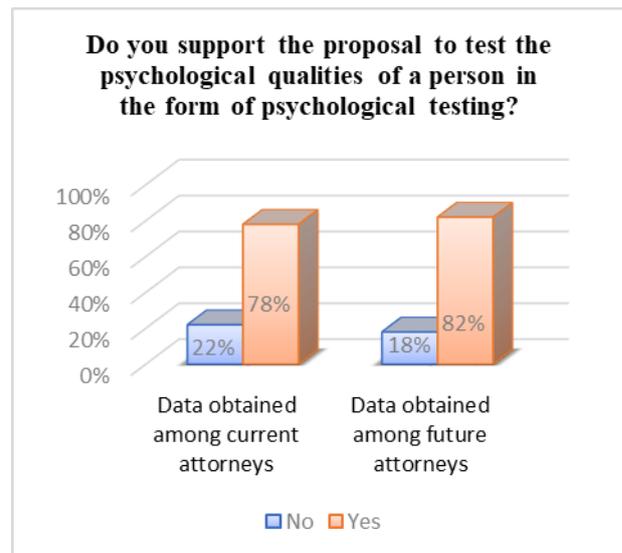


Figure 3 The results of the survey to verify the psychological qualities of the future attorney in the form of psychological testing

Impeccable reputation, high moral culture, honesty are the main moral and psychological qualities of a future attorney, which in the process of carrying out legal activity will gradually be professionalized and thereby contribute to its effectiveness. The results of the survey, analysis of foreign practice gives grounds to assert the expediency and necessity of making changes to the legislation regulating legal activity in terms of requirements for a person who intends to practice law. The necessity of complementing theory and practice with a condition for having an impeccable reputation and high morals, with the possibility of determining the professional and psychological potential of a person during the selection stage of qualification assessment in the form of anonymous psychological testing, has been proved. It is proposed that the responsibility for organizing and conducting this testing, as a mandatory stage of obtaining the status of an attorney, should be assigned to the qualification and disciplinary commissions of the advocacy.

REFERENCES

- [1] Konstytutsiya Ukrayiny [*Constitution of Ukraine*]. (1996). *Vidomosti Verkhovnoyi Rady Ukrayiny*, vyp. 30, st. 141, available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
- [2] Nangue, Audrey Fute Tagne, Elie and Tonye, Emmanuel (2020), "Robust and Accurate Trust Establishment Scheme for Wireless Sensor Network", *International Journal of Computer Network and Information Security*, vol. 12, no. 6, pp.14-29. DOI: 10.5815/ijcnis.2020.06.02
- [3] Shailaja S. Mudengudi and Mahabaleshwar S. Kakkasageri (2019), "Agent Based Trust Establishment between Vehicle in Vehicular Cloud Networks", *International Journal of Computer Network and Information Security*, vol. 11, no. 7, pp. 29-36. DOI:10.5815/ijcnis.2019.07.05
- [4] Pro Stratehiyu rozvytku systemy pravosuddya ta konstytutsiynoho sudochynstva na 2021-2023 roky: Ukaz Prezydenta Ukrayiny [*On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023: Decree of the President of Ukraine*], available at: <https://www.president.gov.ua/documents/2312021-39137>
- [5] Stratehiya rozvytku Natsional'noyi asotsiatsiyi advokativ Ukrayiny na 2021-2025 roky: Rishennya Natsional'noyi asotsiatsiyi advokativ [*On approval of the Development Strategy of the National Bar Association of Ukraine for 2021-2025: Decision of the National Bar Association*], available at: <https://zakon.rada.gov.ua/rada/show/vr038871-21?lang=en#Text>
- [6] Vilchyk, T. Sokolova, A. & Demchyna, T. (2021), "Regulation of advocacy profession: global trends", *Cuestiones Políticas*, vol. 39(69), pp. 689-706. DOI: 10.46398/cuestpol.3969.43
- [7] Bakaianova, N. Svyda, O. Demenchuk, M. Dzhaburiya, O. & Fomina, O. (2019), "Advocacy of Ukraine under constitutional reform", *Amazonia Investiga*, vol. 8 (22), pp. 574-579, available at: <https://amazoniainvestiga.info/index.php/amazonia/article/view/805>
- [8] Zaborovskyy, V. Buletsa, S. Bysaga, Y. & Manzyuk, V. (2020), "Compliance of guarantees of professional activity of ukrainian advocate with international standards of profession of advocate", *Lawyer Quarterly*, vol. 10 (2), pp. 170-187, available at: <https://tlq.ilaw.cas.cz/index.php/tlq/article/view/404>
- [9] Grudtsyna L.Yu. (2013), "Legal support of guarantees of independence, self-government and financing of advocacy", *Eurasian Advocacy*, vol. 2 (3), pp. 23-26.
- [10] Wan Ting (2012), "Study on the Scientific Research Group Management of Chinese High Technology Enterprises from the Perspective of Knowledge Transfer", *IJEME*, vol. 2, no. 3, pp. 57-63. DOI: 10.5815/ijeme.2012.03.09
- [11] Oleksandr Korystin, Nataliia Svyrydiuk, Volodymyr Tkachenko «Fiscal Security of the State Considering Threats of Macroeconomic Nature». Proceedings of the International Conference on Business, Accounting, Management, Banking, Economic Security and Legal Regulation Research (BAMBEL2021). Vol. 188, 27 August 2021, pp. 65-69. DOI: 10.2991/AEBMR.K.210826.012
- [12] Korystin, O.Y. Svyrydiuk, N.P. Mihus, I.P. Likhovitsky, Y.O. and Mitina, O.M. (2020), "Money laundering: macroeconomic assessment methods and current trend in Ukraine", *Financial and credit activities: problems of theory and practice*, vol. 1 (32), pp. 341-350, DOI: 10.18371/fcaptp.v1i32.200865
- [13] Zvit Natsional'noyi Asotsiatsiyi advokativ Ukrayiny za 2020 rik [*Report of the National Bar Association of Ukraine for 2020*], available at: https://unba.org.ua/assets/uploads/news/zvity/UN_BA_ANNUAL_REPORT_2020.pdf. [in Ukrainian].
- [14] Fliazhnikova, Ya. (2019), "European experience of legal regulation of attorney professional ethical behavior", *Actual problems of native jurisprudence*, vol. 5, pp. 173-177. DOI: 10.15421/391982
- [15] Pro advokaturu ta advokat-s'ku diyal'nist': Zakon Ukrayiny [*On Advocacy and and Practice of Law: Law of Ukraine*] (2013), *Vidomosti Verkhovnoyi Rady*, vyp. 27, st. 282, available at: <https://zakon.rada.gov.ua/laws/show/5076-17#Text>
- [16] Pravyly advokat-s'koyi etyky [*Rules of law ethics*] (2019), available at: https://unba.org.ua/assets/uploads/legislation/pravyly/2019-03-15-pravyly-2019_5cb72d3191e0e.pdf
- [17] Polozhennya pro orhanizatsiyu ta poryadok prokhodzheniya stazhuvannya dlya otrymannya osoboyu svidotstva pro pravo na zanyattya advokat-s'koyu diyal'nisty [Provisions on the organization and procedure of internship for a person to obtain a certificate of the right to practice law] (2020), available at: <https://unba.org.ua>

- /assets/uploads/legislation/pologennya/2020-11-17-polozhennya-121_5fc64e07e0a02.pdf
- [18] Lekavičienė, V. Lithuania (application no. 48427/09), available at: http://lrv-atstovas-eztt.lt/uploads/LEKAVICIENE_2017_judgment.pdf
- [19] Jankauskas, V. Lithuania (application no. 50446/09), available at: [http://lrv-atstovas-eztt.lt/uploads/JANKAUSKAS\(2\)_2017_judgment.pdf](http://lrv-atstovas-eztt.lt/uploads/JANKAUSKAS(2)_2017_judgment.pdf)
- [20] Zakharov, A. (2020), “Foreign experience in carrying out administrative procedures in advocacy and the possibility of its use in Ukraine”, *Knowledge, Education, Law, Management*, vyp. 7 (3), pp. 70-74. Doi: 10.51647/kelm.2020.7.3.13
- [21] Bondarenko, V. Okhrimenko, I. Yevdokimova, O. Sydoruk, N. Dzhazhyk, O. Boichuk, I. Kalashnik, N. Kozlovets, M. Slyusar, V. Pavlenko, V. Biruk, N. Verbovskyi, I. & Bloshchynskyi, I. (2020), “Professional Skills and Competencies of the Future Police Officers”, *International Journal of Applied Exercise Physiology*, vol. 9 (5), pp. 35-43, available at: <http://www.ijaep.com/index.php/IJAE/article/view/975>
- [22] Fedorenko, O. Dotsenko, V. Okhrimenko, I. Radchenko, K. & Gorbenko, D. (2020), “Coping Behavior of Criminal Police Officers at Different Stages of Professional Activity”, *BRAIN. Broad Research in Artificial Intelligence and Neuroscience*, vol. 11 (2), pp. 124-146. DOI: 10.18662/brain/11.2/78
- [23] Shvets, D. Yevdokimova, O. Okhrimenko, I. Ponomarenko, Y. Aleksandrov, Y. Okhrimenko, S. & Pronenko, K. (2020), “The New Police Training System: Psychological Aspects”, *Postmodern Openings*, vol. 11 (1Sup1), pp. 200-217. DOI: 10.18662/po/11.1sup1/130
- [24] Abdunayimova, D. (2020), “The professional ethics of lawyers: principles, properties and norms”, *Theoretical & Applied Science*, vol. 05 (85), pp. 923-926. DOI: 10.15863/TAS.2020.05.85.175