

DOI: <https://doi.org/10.18524/2411-2054.2023.51.287982>

U.D.C. 347.965(477.8)185/191”

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ORGANISATION OF THE BAR IN WESTERN UKRAINE IN THE SECOND HALF OF XIX AND EARLY XX CENTURIES

The article is dedicated to the legal aspects and the role of bar associations as entities responsible for bar administration in the Western Ukrainian territories in the second half of the XIX and early XX centuries. Paper analyses how the bar was established, its organizational structure, and the unique features of lawyers and their respective bar associations' functions.

Keywords: lawyer, bar, bar association, lawyer's speech, court debate, Lviv Chamber of Advocates, Provisional Regulations on the Bar from August 16, 1849, Regulations on the Bar from July 6, 1868.

Problem statement. Currently, Ukrainian historical and legal science is going through a phase of rapid advancement. The knowledge gained from the past is being carefully considered, as it is crucial for the progress of contemporary legal science and practice. Simultaneously, historical legal events are being reexamined from fresh perspectives. In this regard, the intellectual accomplishments and administrative expertise of Galician lawyers who operated in the late 19th and early 20th centuries hold great value. They laid the groundwork for the establishment of the national Bar institution in the western region of Ukraine. Many of these lawyers were actively involved in both private legal practice and the political affairs of the region. Notably, some Galician lawyers were elected to the Austrian Sejm, where they not only represented the interests of common people in court but also passionately advocated for their rights on the parliamentary stage. Their extensive body of work can significantly contribute to the ongoing process of reforming the national legal system and public administration.

Analysis of the latest researches and publications. Some aspects of the history of the formation of the national bar in the western Ukrainian lands are revealed by I. Hlovatskyi, M. Voloshyn, L. Horodnytska.

Purpose statement. Legal characteristics and determination of the role of bar associations as bodies of bar administration in the western Ukrainian lands in the second half of the XIX - early XX century.

In essence, this document regulated the main issues of life and activities of the bar, although, as noted, it established a rather limited self-government of the bar in Austria.

The Provisional Regulations provided for the establishment of Bar Associations as self-governing bodies of the Bar. They were established by all lawyers, without exception, who had a practice in the district of the Supreme Court. The powers of the chambers included: electing the president of the chamber, electing and approving standing committees, considering appeals against lawyers suspended or dismissed, appointing auditors of the bar and supervising the observance of honour and dignity by members of the institution. The Chamber's opinion was to be taken into account when deciding on admission to the Bar, but the lawyers did not have a decisive influence on the appointment of future defence counsel. At that time, this right was vested in the Ministry of Justice.

Disciplinary supervision of the legal profession was the responsibility of the Court of Appeal. Its powers included the dismissal of lawyers, the imposition of fines, reprimands, etc. At the same time, when imposing administrative sanctions, the Court of Appeal had to take into account the opinion of the Bar Association in each individual case.

The Provisional Regulations persisted in reaffirming the heightened standards imposed on bar candidates, and successfully passing the bar exam was a challenging endeavor. On 7th August 1850, the Minister of Justice issued an order for a two-stage examination process: an oral examination to assess the candidate's theoretical knowledge in civil and criminal law and a written examination to evaluate their proficiency in drafting procedural documents. If a candidate failed the bar exam on two occasions, they were barred from attempting it for a third time [13, p. 182].

Subsequently, the movement to grant autonomy to the Austrian Bar culminated in the adoption of the Permanent Regulations on the Bar in July 1868. For the first time, the document enshrined the self-government and autonomy of the Bar and abolished the power of the Minister of Justice to decide on the admission of individual lawyers to practice. This provision changed somewhat the requirements for persons wishing to become advocates. In particular, it stipulated that the candidate had to have already completed seven years of legal practice. Passing the bar exam and holding PhD in law were no longer mandatory, but could be replaced by a five-year of work as a court adviser.

The law provided for the establishment of bar associations from among the lawyers who had organised their offices in the jurisdiction of the zemstvo court. They were empowered to express opinions on all matters relating to the life of the bar, to monitor the observance of the dignity and honour of the bar by lawyers, etc. Emphasis was placed on a particularly important function of the chambers - the preparation of draft laws on the activities of the Bar (Article 2) [13, p. 180].

In general, the 1868 regulations introduced significant autonomy for the Bar and increased the degree of self-government within it. The powers of the chambers of advocates were extended. Their responsibilities included maintaining lists of advocates and candidates for advocacy in their districts, participating in the resolution of disputes between members of the bar, and giving opinions on the reasonableness of advocates' fees.

Bar chambers began to appear in Galicia after 1848. In particular, Lviv, Zolochiv, Ternopil, Stanislaviv, Sambir, Krakow, and Przemyśl chambers of lawyers appeared

[14, p. 78]. However, these chambers had a small number of lawyers. Thus, in 1868, the Ternopil Chamber of Advocates, which also covered the territory of the Chortkiv district, had only 16 lawyers, and the Sambir Chamber in 1868 had 6 lawyers. However, all small bar associations merged with the Lviv Chamber later [9, p. 59]. In addition, the lists of regional lawyers began to appear in the newspapers of the time only in 1855, and until 1862, no mention of any bar chambers in Galicia was made in the newspapers. All lawyers are referred to as regional lawyers with an indication of the location of the lawyer's office (Lviv, Ternopil, Przemysl, Stanislaviv, Sambir, Zolochiv, Zhovkva, etc.) [6, p. 75].

The responsibility for training candidates and admitting them to the bar, as well as the selection of lawyers, fell under the authority of the High regional court and the Austrian Minister of Justice. Nevertheless, the regional lawyers were not organized into a unified collegium or chamber, and there was no leadership for the bar. As a result, in each judicial district of the zemstvo court, all lawyers in that area were regarded as members of a collective group called «grona» or «gremium», which referred to the entire team or composition of individuals in the legal community [10, p. 4].

Among the lawyers would select the most respected, authoritative one who represented their professional interests on a voluntary basis before the judiciary and administrative authorities, the Ministry of Justice, and other authorities. Such person was respectfully called a *señor*.

Since the rise of bar associations and self-governing bodies of the bar, in cases when a lawyer could not perform his professional duties for a long time for various reasons, these bodies decided to appoint another one (as a deputy) to temporarily perform such duties.

Before the creation of chambers and independent bodies for legal practitioners, the High regional court used to handle all matters concerning lawyers' activities, such as holidays, medical treatment, temporary absence from their place of residence, and other related issues.

When a person was admitted to the Bar, the relevant court filled in qualification report cards - brief information about the person, including the name of the law school and year of graduation, the date of the defence of doctoral thesis, information about the internship, description of professional strengths and skills demonstrated during the internship, etc.

The Lviv Chamber of Advocates was established in March 1862 to resolve the issues of illegal legal services, until then the Highest regional court had addressed to the former "gremiumu" or the president of the bar association [7, p. 236-237].

The Statute of the Lviv Chamber of Advocates was approved by the Austrian Ministry of Justice on 17 June 1862. In March 1862, a general meeting of lawyers who were members of the former "gremiumu" in Lviv was held, at which the Lviv Chamber of Advocates was founded, its charter and procedure (regulations) were adopted, and executive bodies were elected. Subsequently, in 1871, 1882, 1888 and 1908, new regulations of the Lviv Chamber of Advocates were adopted.

The possibility of establishing a bar association in the West Ukrainian lands was due to the consequences of the 1848 revolution in Austria. However, the situation was changing, and in 1853 Austria abolished the jury system, limited the right to appeal against its decisions, significantly reduced the scope of the defence, and made the judicial

process more formal. Under these circumstances, the official Austrian authorities were in no hurry to provide broad organisational and legal opportunities for the activities of lawyers, who remained the only defenders of ordinary people against the arbitrariness of the authorities [5, p. 7]. In this respect, the cohesion, unanimity and perseverance of the lawyers themselves in organising their independence and autonomy, especially from the judiciary and other authorities, played a decisive role in the establishment of the Lviv Chamber of Lawyers in 1862 [3]. Another factor influencing the emergence of bar associations was the relatively small number of lawyers in certain areas, which required a certain concentration of defence lawyers in a given area.

The Lawyers' Disciplinary Statute of 1872 provided for the establishment of a disciplinary board at each bar association, elected by all its defence counsels, for a term of three years. The disciplinary proceedings against an advocate were initiated by the board with a preliminary investigation: it interrogated the accused and other persons involved, held face-to-face meetings, etc. The statute set out an exhaustive list of disciplinary sanctions applicable to lawyers: a reprimand, a fine of up to 300 crowns (later up to 600 crowns), temporary suspension for up to one year (for candidates - extension of the duration of practice for the same period) and exclusion from the list of lawyers. Those who were excluded from the list of advocates had the right to apply for reinstatement in three years [14, p. 1083].

In general, the Bar Statute led to a rapid increase in the number of lawyers throughout Austria. Between 1898 and 1914 alone, the Austrian legal profession increased from 4,009 to 5,297 lawyers. In 1865, there was one lawyer for every 22,638 inhabitants of Austria, in 1900 - for every 6,085, and in 1910 - for every 5,466 people. [12, c. 109]. Freedom of access to the bar dramatically increased the number of lawyers in the western Ukrainian lands. For example, in the Lviv Court of Appeal in 1868 there were 112 lawyers, in 1870 - 154, and in 1874 - 168. In 1868, there were 39 lawyers in the Krakow Court of Appeal, in 1870 - 54, in 1874 - 64. In 1869, there were 44 lawyers in Lviv, and in 1880 - 79 [13, p. 184].

However, despite the legal permission, the presence of a mere 3-5 lawyers in a specific area hindered the formation of a bar association. Consequently, following the establishment of the Lviv Chamber of Advocates, the Stanislav Chamber emerged shortly thereafter, at the end of 1864. Moreover, the Krakow, Ternopil, and Zolochiv Chambers of Advocates were established between 1862 and 1865. Among these, the Zolochiv Chamber operated independently only until 1873. Among these, the Zolochiv Chamber functioned independently only until 1873. Subsequently, due to a lack of members, it merged with the Lviv Chamber [8, p. 7].

It should be noted that in general, since 1872, the idea of uniting all chambers in Eastern Galicia with the Lviv Chamber, which then addressed such a proposal to these chambers of lawyers, has been emerging. However, only the Zolochiv Chamber responded to this request. The Ternopil chamber opposed the merger when the Lviv chamber repeatedly proposed it. The Przemyśl Chamber was founded much later than the others in Galicia (probably in 1865 or 1868) [11, p. 1083].

The legal status of the chambers of advocates, prior to the adoption of the Regulations on the Bar of 6 July 1868, was determined by the Provisional Regulations on the Bar of 16 August 1849 and the charters of each chamber of advocates. Since only the Charter of the Lviv Chamber of Advocates was found in the archives, we

have reason to believe that it was probably a model document of this type for other chambers that appeared later. The Lviv Chamber of Advocates was in a somewhat special position, since it operated in the capital of Galicia, had the largest number of lawyers, and gained special authority due to the activities of prominent lawyers and politicians.

The subsequently adopted regulations of the Lviv Chamber of Advocates were much more sophisticated in terms of regulating the activities of the Bar. For example, the Rules of Procedure of 1888 consisted of 54 paragraphs and contained a significant number of sections that had not previously existed or had only been mentioned: on the budget of the Chamber, on the delegation of the department, on the commission and the chamber's referees, on admission to the Chamber of Advocates transferring from other chambers, on the state language, on the chamber's office, etc.

In addition, the Lviv Chamber of Advocates for the first time made an attempt to create a code of legal ethics [4, p. 185]. The core idea was that a lawyer needed to review both the legal and ethical aspects of a civil or criminal case before agreeing to take it on. Turning down a case was done in two situations: if the case seemed legally unwinnable or if it contradicted principles of overall or professional ethics.

The Code provided that in criminal cases a lawyer had no right to refuse to assist the accused. The lawyer was obliged to deal fairly with the cases of people who could not pay for his services. Everything a client said to a lawyer was a professional secret. Defence lawyers had to assist each other in the performance of their professional duties.

The Bar's advocacy activities were largely focused on participation in trials. Most of the defence lawyers in Galicia who appeared in political trials prepared their speeches in advance. Thus, when the first publications about the crime appeared in the press, the defenders bought up the magazines that published information about the crime, carefully studied the material as it accumulated, because «they knew that one of them would still be involved in the criminal proceedings that were about to begin» [6, p. 5].

It is notable that the defense lawyers incorporated numerous excerpts from newspapers and various specialized legal texts into their arguments. These references, originally in their original languages, were rendered into Polish. An examination of these documents enables us to conclude that the presentations delivered by the defense attorneys during that era displayed a significant degree of quality both in terms of substance and presentation style.

It's important to acknowledge that the content of the defense speeches presented by Ukrainian lawyers was influenced by the unique characteristics of the political trials held in Eastern Galicia. These trials often dealt with criminal cases involving multiple individuals and were conducted in various locations. Consequently, in these criminal cases, Ukrainian lawyers rarely represented a single client individually. Instead, a single lawyer often took on the defense of several dozen individuals simultaneously. This particular situation resulted in the lawyer not only advocating for their own clients but also, to a certain extent, standing up for all the defendants involved in the case. This approach embodied a sense of solidarity among the lawyers. As a result, the lawyer could intermittently step back from the proceedings, allowing other lawyers to take over temporarily, and then return to the process later, creating a cyclical pattern. However, there were cases when one client was defended by not one but several Ukrainian lawyers [7, p. 11].

In this situation the lawyers had the opportunity to collaborate and decide amongst each other how to approach different aspects of the criminal case. They could assign specific roles, such as delving into the social, political, and historical context of the case, countering the prosecution's evidence, and thoroughly examining the legal classification of the crime. The allocation of responsibilities for addressing various components of their arguments was especially significant in preparation for the court proceedings.

Conclusions and proposals. The formation of the bar administration in the Western Ukrainian lands in the second half of the XIX - early XX centuries was influenced by the all Austrian bar organisation, which was characterised by the increased requirements for the bar, starting with the establishment of differentiated and high bar admission requirements and ending with the requirements for the provision of legal aid.

The legal status of the chambers of advocates prior to the adoption of the Regulations on the Bar of 6 July 1868 was determined by the Provisional Regulations on the Bar of 16 August 1849 and the charters of each chamber. The competence of the chambers included: election of the chairman of the chamber, approval of standing committees, consideration of appeals against temporarily suspended or dismissed advocates, and appointment of auditors of the bar.

The activities of the bar associations in Galicia intensified in 1862.

The possibility of establishing bar associations in the western Ukrainian lands was due to the consequences of the 1848 revolution in Austria and the monarchy's having to make certain concessions to the revolutionary forces, which were used by the lawyers. Another factor that influenced the emergence of bar associations was the relatively small number of lawyers in certain areas, which necessitated a certain concentration of defence lawyers in the respective area to ensure more efficient legal proceedings.

The Lviv Chamber of Advocates was the first to emerge, established at the constituent assembly of Lviv lawyers in March 1862, with the approval of its Charter and procedure by the Austrian Ministry of Justice in June 1862. The Stanislav, Ternopil and Zolochiv chambers merged with the Lviv Chamber in the second half of the nineteenth century, while the Przemysl and Sambir chambers existed independently until the adoption of the Unified Law on the Bar in Poland in 1932, according to which they were also merged with the Lviv Chamber of Advocates.

The Bar's advocacy activities were largely focused on participation in trials. Most of the defence lawyers in Galicia who spoke in political trials prepared their speeches in advance, the theses of their speeches were accompanied by newspaper clippings, legal or other specialised literature that was cited in court debates. Such sources were provided in the original language, but the text was translated into Polish. The content of the advocacy of Ukrainian lawyers of that time was largely determined by the peculiarities of political trials in Eastern Galicia, which were characterised by the involvement of a group of people in criminal cases, which required the involvement of a team of lawyers who determined certain aspects of the defence.

References

1. Advokats`ka diyal`nist` v Ukraini. Normaty`vna baza. O. Royina. K.: KNT, 2005. 132 s. [in Ukrainian].
2. Advokatura Ukrainy` : navch. posib. V. K. Shkarupa, O. V. Filonov, A. M. Ty`tov, Yu. Ya. Kinash. K. : Znannya, 2007. 398 s. [in Ukrainian].
3. Voloshy`n M. (1934). Ty`m, shho vidijshly` vid nas u borot`bi za pravo. *Yuvilejny`j Al`manax Soyuzu ukrajins`ky`x advokativ*. L`viv. S. 74-108. [in Ukrainian].
4. Gankevych L. (1934). Desyaty`littya Soyuzu Ukrainy`x Advokativ. *Yuvilejny`j Al`manax Soyuzu ukrajins`ky`x advokativ*. L`viv. S. 38-46. [in Ukrainian].
5. Glovacz`ky`j I. Yu. (2004). Promovy` ukrajins`ky`x advokativ Galy`chy`ny` na polity`chny`x sudovy`x procesax pochatku XX st.: Naukovo-prakty`chny`j posibny`k. L`viv. 284 s. [in Ukrainian].
6. Glovacz`ky`j I. Yu. (2003). Osobly`vosti rozvy`tku insty`tutu advokatury` na zemlyax Sxidnoyi Galy`chy`ny` i Bukovy`ny`. *Visny`k L`vivs`kogo universy`tetu*. Seriya yury`dy`chna. L`viv. Vy`p. 38. S. 119-127. [in Ukrainian].
7. Glovacz`ky`j I. Yu. (2008). Ukrainy`ki advokaty` Sxidnoyi Galy`chy`ny` v svitli arxivny`x dzherel ta nekrologiv (1800-1939). L`viv: SPOLOM. 304 s. [in Ukrainian].
8. Gorodny`cz`ka L. (1999). Kry`minal`ne sudochy`nstvo na Bukovy`ni (1774-1918 rr.). *Pravo Ukrainy`*. № 12. S. 109-111. [in Ukrainian].
9. Gnatyuk V. (1923). Naukove tovary`stvo imeni Shevchenka. Z nagody` 50-littya jogo zasnuvannya 1873-1923. L`viv. S. 13. [in Ukrainian].
10. Zolota kny`ga advokatury` Ukrainy` uporyad. T. V. Varfolomiyeva, O. L. Zhukovs`ka. K., 2006. 292 s. [in Ukrainian].
11. Istorya L`vova: u 3 t. Redkolegiya Ya. Isayevy`ch, M. Ly`tvyn, F. Steblij. L`viv : Centr Yevropy`, 2007. T. 2. 559 s. 214. [in Ukrainian].
12. Istorya derzhavy` i prava Ukrainy` : navch. posib. / A. S. Chajkovs`ky`j, V. I. Batry`menko, O. L. Kopy`lenko ta in. (2000). K. : Yurinkom Inter. 384 s. [in Ukrainian].
13. Olesny`cz`ky`j Ye. (1889). Drugij z`hhdz pol`sky`x pravny`k`ov y` ekonomist`ov. *Chasopy`s` pravny`cha*. Mhsyachonik dlya teorih y` prakty`ky`. Ch. 8. S. 137-140.
14. Pisko J. (1863). Zur Organisation der Advokatur. Wien. 38 p. [in German].
15. Torosiewicz D. (1822). Mysli o powolaniu obronc`ow s`adowych. Dawid Torosiewicz. W. 250 s. [in Polish].

Список використаної літератури

1. Адвокатська діяльність в Україні. Нормативна база. О. Роїна. К.: КНТ, 2005. 132 с.
2. Адвокатура України : навч. посіб. В. К. Шкарупа, О. В. Філонов, А. М. Титов, Ю. Я. Кінаш. К. : Знання, 2007. 398 с.
3. Волошин М. Тим, що відійшли від нас у боротьбі за право. Ювілейний Альманах Союзу українських адвокатів. Львів, 1934. С. 74-108.
4. Ганкевич Л. Десятиліття Союзу Українських Адвокатів. Ювілейний Альманах Союзу українських адвокатів. Львів, 1934. С. 38-46.
5. Гловацький І. Ю. Промови українських адвокатів Галичини на політичних судових процесах початку ХХ ст. : Науково-практичний посібник. Львів, 2004. 284 с.
6. Гловацький І. Ю. Особливості розвитку інституту адвокатури на землях Східної Галичини і Буковини. Вісник Львівського університету. Серія юридична. Львів, 2003. Вип. 38. С. 119-127.
7. Гловацький І. Ю. Українські адвокати Східної Галичини в світлі архівних джерел та некрологів (1800-1939 рр.). Львів: СПОЛОМ, 2008. 304 с.
8. Городницька Л. Кримінальне судочинство на Буковині (1774-1918 рр.). Право України. 1999. № 12. С. 109-111.
9. Гнатюк В. Наукове товариство імені Шевченка. З нагоди 50-ліття його заснування 1873-1923. Львів, 1923. С. 13.
10. Золота книга адвокатури України. Упоряд. Т. В. Варфоломієва, О. Л. Жуковська. К., 2006. 292 с.
11. Історія Львова: у 3 т. Редколегія Я. Ісаєвич, М. Литвин, Ф. Стеблій. Львів : Центр

- Європи, 2007. Т. 2. 559 с.
12. Історія держави і права України : навч. посіб. А. С. Чайковський, В. І. Батрименко, О. Л. Копиленко та ін. К. : Юрінком Інтер, 2000. 384 с.
 13. Олесницький Є. Другий з'їзд польських правників і економістів. Часопись правнича. Мнсячонік для теорії и практики. 1889. Ч. 8. С. 137-140.
 14. Pisko J. Zur Organisation der Advokatur. Wien, 1863. 38 p.
 15. Torosiewicz D. Mysli o powolaniu obrońców sądowych. Dawid Torosiewicz. W., 1822. 250 s.

Стаття надійшла 16.08.2023 р.

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ОРГАНІЗАЦІЯ ДІЯЛЬНОСТІ АДВОКАТУРИ В ЗАХІДНІЙ УКРАЇНІ ДРУГОЇ ПОЛОВИНИ ХІХ – ПОЧАТКУ ХХ СТОЛІТТЯ

Резюме

Стаття присвячена дослідженню організаційно-правових основ становлення та діяльності адвокатських палат як органів адвокатського управління в Галичині у складі Австрії та Австро-Угорщини. Розкрито її місце та роль у державно-політичній системі. Виявлено переваги, недоліки та особливості їх функціонування, зумовлені специфікою системи державного управління Галичиною. Визначено, що формування адвокатського управління на західноукраїнських землях у цей період проходило під впливом загальноавстрійської організації адвокатури, для якої характерним було висунення до адвокатури підвищених вимог, починаючи з установаження диференційованих і високих пензів щодо вступу до адвокатури та завершуючи приписами щодо надання правової допомоги. Правове регулювання адвокатської діяльності цього періоду здійснюється Тимчасовим положенням про адвокатуру від 16 серпня 1849 р., Положенням про адвокатуру від 6 липня 1868 р., а також статутами кожної адвокатської палати. До компетенції палат належали: вибори голови палати, затвердження постійних комісій, розгляд апеляції стосовно тимчасово відсторонених або звільнених від обов'язків адвокатів, призначення ревізорів адвокатської діяльності. Діяльність адвокатських палат у Галичині активізується з 1862 року. Виникнення можливості створення адвокатських палат на західноукраїнських землях було обумовлене поступками монархії у зв'язку з революцією 1848 р. в Австрії та незначною чисельністю адвокатів в окремих місцевостях Галичини, що вимагало їх концентрацію в певних центрах. Першою виникла та стала головною Львівська палата адвокатів, що була утворена на установчих зборах львівських правників у березні 1862 р. Станіславська, Тернопільська та Золочівська

