



REQUESTS FOR PUBLIC INFORMATION IN THE STATE  
ADMINISTRATION IN SITUATIONS OF MILITARY OPERATIONS  
*SOLICITUDES DE INFORMACIÓN PÚBLICA EN LA ADMINISTRACIÓN  
ESTATAL ANTE SITUACIONES DE OPERACIONES MILITARES*

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#### ABSTRACT

The aim of the study is to analyse the advocate's letter of enquiry as a means of obtaining information by advocates to carry out their professional activity in the conditions of military operations. Attention is drawn to a number of issues that complicate the process of submitting advocate's letter of enquiry and the proper use of this mechanism and procedure by an advocate, namely, during the deployment of military operations. Ratification of the EU-Ukraine Association Agreement opens up new prospects not only for Ukrainian and European producers, but also provides for interesting objectives for advocates to consult the private sector in the process of building new markets. In this article, we propose to make a comparison and consider the issue of access to the advocate's letter of enquiry of Ukrainian and Polish specialists during the protracted hostilities. As a result of the research, problems were identified and proposals were made for a simplified procedure for submitting an advocate's letter of enquiry as a means of legal communication in the field of advocacy as a necessary condition for the period of military operations.

*Keywords:* Public information; public management; advocate's letter of enquiry; public administration; free legal aid.

#### RESUMEN

El objetivo del estudio es analizar la carta consulta del abogado como medio de obtención de información por parte de los abogados para el ejercicio de su actividad profesional en condiciones de operaciones militares. Se llama la atención sobre una serie de cuestiones que complican el proceso de presentación de la carta de consulta del abogado y el uso adecuado de este mecanismo y procedimiento por parte de un abogado, a saber, durante el despliegue de operaciones militares. La ratificación del Acuerdo de Asociación UE-Ucrania abre nuevas perspectivas no solo para los productores ucranianos y europeos, sino que también proporciona objetivos interesantes para que los defensores consulten al sector privado en el proceso de construcción de nuevos mercados. En este artículo, proponemos hacer una comparación y considerar el tema del acceso a la carta de consulta del abogado de especialistas ucranianos y polacos durante las hostilidades prolongadas. Como resultado de la investigación, se identificaron problemas y se propusieron un procedimiento simplificado para la presentación de la carta de consulta del abogado como medio de comunicación legal en el campo de la abogacía como condición necesaria para el período de operaciones militares.

*Palabras clave:* Información pública; gestión pública; carta de consulta del abogado; administración Pública; asistencia legal gratuita.

*Summary:* 1. Introduction. 2. Methods and materials. 3. Results. 4. Discussions. 5. Conclusion. Bibliographic references.

## 1. INTRODUCTION

One of the conditions for Ukraine's integration into the European Union is building of an advocacy system and the creation of legislation on its organization and activities, with the provisions reproducing the model of a democratic legal institution of advocacy. Because only the proper functioning of the institution of advocacy allows the development of democracy and the rule of law. Under such conditions, the study of the role of the advocate's letter of enquiry as a means of legal communication in the field of advocacy of the organization and the activities of this institution of advocacy, in particular, the problems of advocates' responsibility to the client, is topical in the context of compliance of Ukrainian legislation with European standards. One of the main methods of obtaining this information is the advocate's letter of enquiry, which is the subject of this study.

The aim of the article is the analysis of the means of disclosing an advocate's letter of enquiry for legal information, which involves research into the legal nature of an advocate's letter of enquiry, study of some practical aspects of law, analysis of rights that hinder or complicate the advocate's fulfilling the conditions in a period of uncertainty due to the introduction of martial law and the conduct of military operations.

In addition, it should be noted that the legislative regulation has reached a new level with the adoption of the Law of Ukraine "On the Bar and Legal Practice"<sup>7</sup>, where this issue, namely an advocate's letter of enquiry, is dealt with in Article 24. The Civil Code of Ukraine (hereinafter referred to as "the CCU") contains the legal and basic definitions of the information — "any information or data that can be stored on physical media or displayed electronically"<sup>8</sup>.

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7 Verkhovna Rada of Ukraine. The Law of Ukraine "On the bar and legal practice". (2013). <https://zakon.rada.gov.ua/laws/show/5076-17#Text>.

8 Verkhovna Rada of Ukraine. Civil Code of Ukraine. (2003). <http://zakon3.rada.gov.ua/laws/show/435-15>.

According to Art. 24(I) of Law of Ukraine No. 5076-VI “On the Bar and Legal Practice” of July 5, 2012 as amended (hereinafter — “Law No. 5076”), an advocate’s letter of enquiry is a written request of an advocate to a public authority, local self-government body, their officers and officials, enterprises, institutions and organizations, regardless of the form of ownership and subordination, public associations on the provision of information, copies of documents required by an advocate to provide legal aid to the client. Copies of the advocate’s certificate proving the right to practice advocacy, a writ or a power of attorney of a body (institution) authorized by law to provide free legal aid shall be attached to the advocate’s letter of enquiry. It is prohibited to request the advocate to submit other documents together with the advocate’s request. An advocate’s letter of enquiry may not relate to the provision of advice and clarification of legal provisions. The information and copies of documents obtained during the criminal proceedings to the advocate shall be provided in accordance with the procedure established by the criminal procedure law<sup>9</sup>. The practice of advocate’s letters of enquiry shows 51% of formal responses from government agencies<sup>10</sup>.

According to Art. 24(II) of Law No. 5076, public authorities, local self-government bodies, their officers and officials, heads of enterprises, institutions, organizations, public associations to which the advocate’s letter of enquiry is sent shall provide the advocate with relevant information, copies of documents, except for restricted information and copies of documents containing restricted information, not later than five working days from the date of receipt of the letter of enquiry (Government Fiscal Service of Ukraine, n. d.).

## 2. METHODS AND MATERIALS

The research procedure involved the use of a number of research techniques in a logical sequence. The research was initiated on the basis of a conceptual analysis of the issues studied in the article. This allowed us to identify the functionality of the advocate’s letter of enquiry and analyse it in the domestic and global markets. This technique was reinforced by the use of general scientific methods at this stage. Namely: method of analysis and synthesis, method of

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9 S. E. Pogodayev, “Marketing of works as a source of the new hybrid offerings in widened marketing of goods, works and services”. *Journal of Business and Industrial Marketing*, 28(8), 638-648. (2013). doi:10.1108/JBIM-04-2012-0069.

10 C. Driesen et. al. *Een rechtsvergelijkende en rechtssociologische studie* [A study of comparative law and sociology of law]. Brussel: Larcier. . (2006).

generalization, method of logical and structured system analysis, methods of control. Structural and functional analysis was used in a global context to study the role of the advocate's letter of enquiry as a means of legal communication in the field of advocacy. The method of content analysis was used in the study of the legal framework.

The next stage of the research procedure was the use of qualitative sociological methods and quantitative methods of statistical information analysis, collection of empirical data to clearly describe the problem situation of the advocate's letter of enquiry as a means of legal communication.

Methods of quality data processing (statistics of advocacy they provide, different methods of classification, differentiation of problems in the field of counselling) were based on certain research on the role of advocacy. An empirical research method allowed obtaining scientific facts during the observation of advocate's letters of enquiry for diagnosis of the domestic and world services market, namely the number of advocate's letters of enquiry, qualification of specialists to provide advice.

The study involved the method of expert interviews to analyse the procedural features and prospects of the advocate's letter of enquiry in modern Ukraine. The method of in-depth (expert) interview provides individual meetings with representatives of certain target groups in order to study their views and attitudes to social control in Ukraine. This kind of interview is conducted using open-ended questions, and may not be clearly structured. It allows identifying the deep attitude of the target audience to the problem issues, namely: thoughts, motives, feelings, ideas, views of the respondents. The procedure for organizing and conducting an in-depth interview included the following stages: drawing up the plan of an in-depth interview for each of the identified target groups; the process of planning and preparing for the interview; organizing and conducting interviews; processing and analysis of the obtained results; report preparation.

The stage of planning and preparation for the interview involved establishing contacts with active advocates. After that, the method of "snowball" was used to search for respondents. The main criteria for selecting respondents for in-depth interviews: 1) belonging to a certain professional group; 2) the ability to provide quality, detailed and reliable information about the process of social control, accessibility and motivation to participate (based on the results of a previous interview); 3) maintaining gender balance in the selection of participants.

The questions from the guide were used during interviews, including open-

ended questions, game elements and techniques that helped to reduce emotional tension, establish friendly and partnership relations with respondents, techniques that stimulated the story or, conversely, “cut off” side topics that were not relevant to the study. A total of 4 in-depth interviews were conducted.

### 3. RESULTS

Experts interviewed during the expert interview noted that the results of about 60% of advocate’s letters of enquiry are formal answers from public authorities. This gives grounds to believe that the advocate’s letter of enquiry is ineffective in the realities of the legal practice of modern Ukraine.

In accordance with the provisions of national law, if an advocate’s letter of enquiry concerns the provision of a significant volume of information or requires the search of information among a significant volume of data, the time for consideration of advocate’s letter of enquiry may be extended to twenty working days with a justification of the reasons for such extension, of which the lawyer shall be notified in writing no later than five working days from the date of receipt of the advocate’s letter of enquiry. The response usually takes a long time, justified by the need to attach a copy of the documents<sup>11</sup>.

If the advocate’s letter of enquiry involves making copies of documents longer than ten pages, the advocate is obliged to reimburse the actual cost of copying and printing. Their cost may not exceed the limits of copying and printing cost established by the Cabinet of Ministers of Ukraine in accordance with Law of Ukraine No. 2939-VI “On Access to Public Information” of January 13, 2011 as amended. Art. 24(III) of Law No. 5076 stipulates that refusal to provide information upon advocate’s letter of enquiry, late or incomplete provision of information, provision of information that does not correspond to reality, shall entail liability established by law, except in cases of refusal to provide restricted information (Government Fiscal Service of Ukraine, n.d.).

According to modern theorists, the Polish market for legal services is one of the most liberal in the European Union. With a formal position, anyone may submit advocate’s letter of enquiry in Poland, even without legal education. The

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11 L. Řehulová, Advokatni cancelar (2021). [https://www.rehulova-ak.cz/?gclid=CjwKCAjwwqaGBhBKEiwAMk-FtGUdYb1Y3u5MoNDz-owky9qQNZPTZXE6-X-T4CF8sHWdWs6Os\\_p13RoC3WUQAxD\\_BwE](https://www.rehulova-ak.cz/?gclid=CjwKCAjwwqaGBhBKEiwAMk-FtGUdYb1Y3u5MoNDz-owky9qQNZPTZXE6-X-T4CF8sHWdWs6Os_p13RoC3WUQAxD_BwE).

legal basis for submitting advocate's letter of enquiry is the Law on Freedom of Economic Activity (Polish: "Ustawa o swobodzie dzialannosci gospodarczej"). Typically, advocacy includes the provision of oral and written advice, the preparation of claims and legal opinions, and sometimes even practical assistance in legal proceedings, including the preparation of procedural documents on behalf of a party to the proceedings, however, not signing them, as there is a monopoly of lawyers on the representation of persons in courts in Poland<sup>12</sup>. The legal status of advocates in Poland is regulated by the Law on Advocacy, which defines the basic rights and responsibilities of an advocate, the procedure for acquiring the right to practice advocacy and other aspects of the advocate's activity. In addition, procedural issues of lawyers' activity are regulated in the Code of Civil Procedure (Article 87 of the Code of Civil Procedure) and the Code of Criminal Procedure (Article 82 of the Code of Criminal Procedure). In addition, Polish advocates must adhere to the Code of Ethics of Attorneys at Law, which was adopted on December 14, 2011<sup>13</sup>.

In accordance with Art. 87(I) of the Code of Civil Procedure, the representative may be a lawyer or legal adviser (Polish: *radca prawny*), and in cases involving intellectual property – also a patent advisor. Art. 82 of the Code of Criminal Procedure ("Defence Counsel") clearly stipulates that may be only one person authorized to defend in accordance with the provisions of the Law on Advocacy or the Law on Legal Advisers can be a defence counsel. In practice, a defence counsel in criminal proceedings in Poland is always a lawyer, while in civil proceedings this can be a lawyer or legal adviser. In civil and commercial procedure, the interests of a legal entity (enterprise or company) may be represented by a director, member of the board, supervisory board or other governing body, staff legal counsel (by power of attorney) or another person "properly authorized by the legal entity." In civil cases, in addition to lawyers, the interests of the party to the proceedings may be represented by a close relative, but he/she does not enjoy the rights of a lawyer<sup>14</sup>.

As a general rule, foreign specialists are allowed to practice advocacy in

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12 Poradnik Przedsiębiorcy (2020). <https://poradnikprzedsiębiorcy.pl/-prawnik-z-urzedu-kto-i-kiedy-moze-go-dostac>.

13 A., Volkov, & M. Melny, "Ukraine and Poland: Access of foreign lawyers and jurists to related markets" *Yurydychna Hazeta Online*, 13(511). (2016, March 28). Retrieved from <https://yur-gazeta.com/publications/practice/inshe/ukrayina-y-polshcha-dostup-inozemnih-advokativ-ta-pravnikiv-na-sumizhni-rinki.html>

14 *Wsądzie i urzędzie* (2020). <https://www.rp.pl/W-sadzie-i-urzedzie/303249964-Sad-Najwyzszy-trzeba-umiec-prosic-o-prawnika-z-urzedu.html>.

Poland. Such a possibility is provided for in the Law on the Provision of Legal Aid by Foreign Lawyers in Poland adopted on July 5, 2012 (Polish: “Ustawa o świadczeniu przez prawników zagranicznych pomocy prawnej w

Rzeczypospolitej Polskiej”). At the same time, the criteria set for the admission of lawyers from the European Union and other countries are different. A foreign lawyer must pass a test of knowledge of the law in Poland, a test of knowledge of the Polish language (oral and written), as well as submit documents proving his identity, completed legal education and the right to practice advocacy. Exemption from testing for knowledge of the law is allowed if a foreign advocate proves that he/she has practiced law in Poland continuously for the last 3 years before submitting the documents. A contribution of PLN 1,850 (UAH 12,500) is paid for admission to the right to practice advocacy in Poland, the amount of the contribution changes annually and is calculated from the amount of the minimum pension<sup>15</sup>.

The Ukrainian legal community emphasizes the Decision of the Constitutional Court of Ukraine in the case of free choice of defence counsel of November 16, 2000, in which the Court interpreted Article 59 of the Constitution of Ukraine, noting that the phrase “everyone is free to choose a defence counsel” should be understood as “the constitutional right of a suspect, accused and defendant in defence of the prosecution and a person who is brought to administrative responsibility to choose a person who is a specialist in the field of law, has the right to provide legal assistance in person or on behalf of a legal entity by law as a defender of their direct rights in order to obtain legal aid.”

Interestingly, in November 2014, the Constitutional Tribunal of Poland considered a similar request No. SK22/02, and ruled that not only lawyers and legal advisers (Polish: *radca prawny*) can practice advocacy, but also any person who has a higher legal education. This decision of the Tribunal gave impetus to law firms that are not registered with the Polish advocacy self-government to freely provide legal services to their clients<sup>16</sup>.

It should be noted that in April 2016, the Constitutional Tribunal of Poland considered another case (No. K6/06) on access to the legal profession, and

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15 Stowarzyszenie SPES (2020). <https://www.spes.org.pl/twoje-prawa/bezplatna-pomoc-prawna/adwokat-z-urzedu>.

16 T. Oleksiyuk, (2020, November 20). *Using advocate’s enquiry and informational enquiry in the daily activity of an advocate*. <https://www.hsa.org.ua/blog/vykorystannya-advokatskogo-zapytu-ta-informatsijnogo-zapytu-u-shhodennij-diyalnosti-advokata/>.



adopted the Decision of April 19, 2016, where it noted in the substantive provisions: “The Court notes that training for a profession, as well as admission to a profession, cannot be subject to unrestricted freedom and regulated by the market without the establishment and regulation of professional and ethical requirements. The legislator must strictly monitor compliance with existing standards of the legal profession, and establish liability for improper provision of legal aid. In order to protect the rights of persons receiving legal aid, the Constitutional Tribunal shares the criticism of the inadmissibility of providing legal aid out of control (within the limits set by the legislator) of its forms and quality by public authorities and local self-governments<sup>17</sup>.”

It is interesting that only 57 foreign lawyers were registered in the official registers, 12 of which were from EU member states, as of the end of June 2011 (Poland became a member of the EU on May 1, 2004). At the same time, if you look at the pages of international law firms, the vast majority of them have offices in Warsaw, and some – even in other cities where big business is concentrated (Wrocław, Gdansk, Katowice). So, in fact, there are thousands of foreign advocates in Poland who are in no hurry to declare themselves officially. This is due to the fact that the registration of foreign advocates (lawyers) automatically means the spread of ethical requirements and the possibility of disciplinary action in case of violation. As a result, foreign lawyers “successfully use” the Law on Freedom of Economic Activity, which is not subject to supervision by anyone. The lack of official registration of a foreign lawyer in the advocate self-government allows to circumvent the requirements for advertising legal services and finding clients. Thus, Polish advocates complain that foreign advocates are often in a better position, because without formal registration they cannot be brought to disciplinary responsibility for violating the ethical norms of the legal profession<sup>17</sup>.

The Law on the Advocacy, adopted on December 19, 1992, provided that an advocate could be “a citizen of Ukraine who has a higher legal education, work experience as an advocate or advocate’s assistant for at least 2 years, passed qualifying exams, obtained an advocate’s certificate proving the right to practice advocacy, and took the Oath of Advocate of Ukraine.” Such a legal structure existed until 2006, when Art. 2 of the Law was amended and “the citizen of

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<sup>17</sup> Dział 2 - Pomoc prawna z urzędu - Kodeks postępowania cywilnego (2020). <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/kodeks-postepowania-cywilnego-16786199/cz-1-ks-1-tyt-5-dz-2>.

Ukraine” was replaced by “a person with higher legal education, confirmed by a diploma of Ukraine or, in accordance with international treaties of Ukraine, a diploma of another country”, and knowledge of the state language was added to the qualification requirements. The new Law on the Bar and Legal Practice<sup>18</sup>, which entered into force on August 15, 2012 enshrined this rule, except for certain provisions. At the same time, the new Law on Advocacy separately provides for the possibility of practicing law in Ukraine by a foreign advocate in accordance with the requirements of this Law. So, let’s examine these requirements.

One of the key conditions that must be met to obtain the right to practice advocacy in Ukraine is higher legal education. The Law on the Bar and Legal Practice (Article 6) specifies that full higher legal education means education obtained in Ukraine, as well as complete higher legal education obtained in foreign countries and recognized in Ukraine in the manner prescribed by law. This is the so-called “nostrification”, or the procedure for recognizing diplomas of foreign countries, which is carried out by the Ministry of Education and Science of Ukraine. This approach has been repeatedly criticized in the legal community, because, given the world rankings of universities in which Ukrainian universities do not rank first. So, a foreign worker who, for example, studied at Harvard, Oxford, Cambridge and decided to work in Ukraine, must pass the procedure for recognizing his/her diploma (nostrification) in Ukraine, which takes weeks and sometimes months.

The procedure for acquiring the right to practice advocacy in Ukraine by an advocate of a foreign state is regulated by Art. 59-61 of the Law on the Bar and Legal Practice. A foreign advocate who intends to practice advocacy in Ukraine shall apply to the Qualification and Disciplinary Bar Commission at the place of his/her residence or stay in Ukraine with a request to be included in the Single Register of Advocates of Ukraine. The application shall be accompanied by documents confirming the right of a foreign advocate to practice advocacy in the foreign country. Such an application is considered by the Qualification and Disciplinary Bar Commission within 10 days, and in the absence of grounds for refusal (provided by law) a decision is made to include a foreign advocate in the Single Register of Advocates of Ukraine. It is interesting that the website of the National Bar Association of Ukraine contains Decision of the Bar Association of Ukraine No. 155 “Regulations on the List of Documents and the Procedure for

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18 Verkhovna Rada of Ukraine. *The Law of Ukraine “On the bar and legal practice”*. (2013). <https://zakon.rada.gov.ua/laws/show/5076-17#Text>

Inclusion of a Foreign Advocate in the Single Register of Advocates of Ukraine” of June 1, 2013 set out in English. When an advocate of a foreign state is engaged in advocacy on the territory of Ukraine, he/she is subject to the professional rights and obligations of an advocate, guarantees of advocacy provided by law.

The amount of the annual fee that foreign advocates must pay to the advocate self-government is determined by Decision of the Bar Association of Ukraine No. 157 of June 1, 2013 — it is equivalent to 20 minimum wages set for January 1 of the year for which the fees are paid. Thus, in 2016 the fee is UAH 27,560, which is equal to PLN 4,060 at the current exchange rate. That is, the fees for foreign advocates in Ukraine are at least twice as high as the fees of foreign lawyers in Poland<sup>19</sup>.

The Law of Ukraine “On the Bar and Legal Practice”<sup>20</sup> (hereinafter — “the Law”), namely Art. 24(I) clearly defines the term “advocate’s letter of enquiry”, namely — “a written request of an advocate to a public authority, local self-government body, their officers and officials, enterprises, institutions and organizations, regardless of the form of ownership and subordination, public associations on the provision of information, copies of documents required by an advocate to provide legal aid to the client”. This definition provides many answers about the legal nature of an advocate’s letter of enquiry. Let’s analyse it according to the following paragraphs.

As follows from the definition given by the Law, only an advocate can apply with an advocate’s letter of enquiry. This is especially important when an advocate’s letter of enquiry is made and submitted by an advocate’s assistant, or is made and submitted by an advocate who acts as a member of a law firm or association. Regardless of whether the letter of enquiry is made personally by an advocate or his/her assistant, the initial data about the requester must contain information about the advocate, and the letter of enquiry must be signed by an advocate. It is equally important to consider this condition in cases where the letter of enquiry is executed on the headed form of a law firm or association.

In order to confirm the authority to submit an advocate’s letter of enquiry, the law obliges an advocate to attach the copies of an advocate’s certificate proving

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19 T. Oleksiyuk, *Using advocate’s enquiry and informational enquiry in the daily activity of an advocate*. (2020, November 20). <https://www.hsa.org.ua/blog/vykorystannya-advokatskogo-zapytu-ta-informatsijnogo-zapytu-u-shhodennij-diyalnosti-advokata/>.

20 Verkhovna Rada of Ukraine. *The Law of Ukraine “On the bar and legal practice”*. (2013). <https://zakon.rada.gov.ua/laws/show/5076-17#Text>

the right to practice advocacy, a writ or power of attorney of a body (institution) authorized by law to provide free legal aid. The law prohibits to request an advocate to attach documents other than the above-mentioned. This is an exhaustive list of supporting documents, and the Law prohibits requesting others (Article 24(I)(2) of the Law<sup>21</sup>.

The law also defines the range of entities to which a lawyer can apply. Conventionally, we will call this range of entities the holders of information. This category, as follows from the Article 24 (I)(1) of the Law, includes public authorities, local self-government bodies, officers and officials of public authorities and local self-governments, enterprises, institutions and organizations, regardless of the form ownership and subordination, public associations. However, this provision does not apply to information held (owned) by individuals, which must be taken into account when preparing an advocate's letter of enquiry<sup>21</sup>.

Analysis of Art. 24 of the Law states that an advocate has the right to submit an advocate's letter of enquiry not to satisfy his/her own curiosity in his/her personal interests, but only within the contract with the client in order to provide legal aid to the latter. Article 24(I)(3) of the Law prohibits the submission of advocate's letters of enquiry for advice and clarification of the provisions of the law <sup>21</sup>.

According to the legislation of Ukraine, an advocate's letter of enquiry is a written request. Therefore, an advocate's letter of enquiry shall be executed only in writing, with the obligatory addition of documents confirming the powers of an advocate. Despite the fact that the legislation does not set special requirements for the letter of enquiry, it is advisable to comply with the established general rules for the execution of documents, including record keeping.

Another important aspect is the statutory deadline for providing relevant information to advocates. That is, the law stipulates that advocate's letters of enquiry should be submitted to public authorities, local self-government bodies, their officials, heads of enterprises, institutions, organizations and public associations to provide them with relevant information and copies of documents, except for restricted information<sup>21</sup>.

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<sup>21</sup> Verkhovna Rada of Ukraine. *The Law of Ukraine "On the bar and legal practice"*. (2013). <https://zakon.rada.gov.ua/laws/show/5076-17#Text>

According to the provisions of Article 24(II)(3) of the Law of Ukraine “On the Bar and Legal Practice”, an advocate is obliged to reimburse the actual costs of copying and printing if the satisfaction of his/her request involves making copies of documents of more than ten pages. This provision is similar to the provisions of the Law of Ukraine “On Access to Public Information”. This gives us reason to say that the legislator equates the right to an advocate’s letter of enquiry with the right to obtain public information that does not take into account the specifics of advocacy. In fact, an advocate who exercises his/her legal powers by collecting certain information to protect the rights of another person is equated to any person who needs public information to exercise his/her legal rights, which essentially levels an advocate’s letter of enquiry <sup>22</sup>.

However, the biggest problem for advocates in obtaining information is the provision of the same Article 24, which prescribes that the subjects of information relations, to which an advocate’s letter of enquiry is attributed, are not obliged to provide restricted information and copies of documents containing such information. The deployment of hostilities further complicated this problem.

We found in the course of an expert interview that approximately one in three advocates does not have a clear understanding of the treatment of the information they are requesting. And this is not surprising, because the information legislation is quite complex and constantly changing. For example, Article 21 of the Law of Ukraine “On Information” stipulates that confidential, sensitive and proprietary information shall be restricted information (Free legal aid, 2020). Information about an individual, as well as information restricted by an individual or a legal entity, except for power entities, shall be confidential. Confidential information may be disseminated at the request (consent) of the person concerned in the manner he/she prescribed, as well as in other cases provided by law. That is, any information can fall under the confidential treatment.

Now, we move on to a more detailed analysis of confidential information. In accordance with Article 11(I) of the Law of Ukraine “On Information”, information about an individual (personal data) is information about an individual who is identified or can be identified. Confidential information about an individual includes, in particular, information about his/her nationality, education, marital status, religious beliefs, health status, as well as address, date and place of birth, which is a very serious restriction.

However, in terms of rules and exceptions in the legislation, the field of information is one of the record holders. Let’s illustrate this with the example of

restricting access to personal data mentioned above (Table1).

Table 1. Liability for failure to provide information upon advocate's letter of enquiry

Item No.	Name of the article	Content
1.	Article 24 of the Law of Ukraine "On the Bar and Legal Practice" (Verkhovna Rada of Ukraine, 2013)	Refusal to provide information upon advocate's letter of enquiry, untimely or incomplete provision of information, provision of information that does not correspond to reality shall entail liability established by law, except for cases of refusal to provide restricted information.
2.	Article 23 of the Law of Ukraine "On the Bar and Legal Practice" (Verkhovna Rada of Ukraine, 2013)	The request to send a contract for legal aid is illegal, as the advocate's agreement with the client may contain information that is an advocate-client privilege. Any interference and obstacles to the practice of advocacy are prohibited, it is prohibited to request an advocate, his/her assistant, trainee, other persons to provide information that is an advocate-client privilege.
3.	Article 397 of the Criminal Code of Ukraine	Establishes liability for obstruction of the lawful activity of a defence counsel or a person's representative for the provision of legal aid or violation of the guarantees of their activity and professional secrecy established by law.
4.	Article 212-3 of the Code of Ukraine on Administrative Offences	Establishes liability in the form of a fine for violation of the right to information (entails the imposition of a fine on officials from twenty-five to fifty non-taxable minimum incomes)
5.	Article 60 of the Law of Ukraine "On Prevention of Corruption"	Establishes requirements for transparency and access to information.

Proprietary information may include data contained in the documents of the power entities, which constitute internal official correspondence, reports, recommendations, if they are related to the development of the direction of activity of the institution or the exercise of control, supervisory functions by public authorities, the process of adopting decisions, and precede public discussion

and/or decision-making; collected in the process of operational investigations, counterintelligence activities in the field of national defence, which is not classified as a state secret. Most of the information requested in the answer is presented as closed due to the comparison of it with a military secret, which is contrary to the current legislation. After all, during martial law, constitutional norms, requirements and rights remained unchanged.

As practice shows, in Ukraine there is often a situation of non-enforcement of court decisions by the State Tax Service/State Fiscal Service on the registration of tax invoices. Therefore, we will try to describe common and effective remedies depending on their effectiveness, cost and duration, namely the procedure for submitting an advocate’s letter of enquiry<sup>22</sup> (Table 2).

Table 2. Advocate’s letter of enquiry regarding the procedure for maintaining the register of tax invoices

Item No.	Name	Way of resolution
1	Submission of an advocate’s letter of enquiry	The request to provide information on the status of enforcement of the court decision. The response can be obtained on general grounds in no more than five working days, but if an advocate’s letter of enquiry concerns the provision of a significant volume of information, the period may be extended to 20 working days. This method requires costs (in particular for the advocate’s services), but the efficiency and duration are quite optimal.
2	Written application	Executed in compliance with the Law “On Access to Public Information”. This method is cost-effective (only post fee is paid), but the time is quite long, at best, the answer can be obtained in 30 calendar days from the date of receipt of the request by the tax authority. There are also some shortcomings in terms of efficiency, as in fact there is no legal impetus in this case.

<sup>22</sup> Rudkovska, M. *Tax invoices registration*. (2020, August 12). <http://legalclinic.nl.u.edu.ua/2020/08/12/rejestratsiya-podatkovih-nakladnih>.

3.	Submission of a relevant application to law enforcement agencies (police and prosecutor's office).	Your application is registered and criminal proceedings are opened on the fact of intentional failure to enforce a court decision (Article 382 of the Criminal Code of Ukraine). When resorting to this method, you should understand that this process will take the most time and effort (psychological and physical) of all the methods described in this collection, but it is quite effective.
4.	Submission of a written or electronic complaint to the business ombudsman	By appealing against a decision or action, you will report every step that the business ombudsman takes in your case. This method is quite optimal both in terms of time and in terms of costs, and is not inferior in efficiency to the above remedies.
5.	Oral appeal through the interactive service "PULSE"	This is a kind of means of communication with employees of the State Tax Service/State Fiscal Service by sending an oral complaint about their actions or inaction. It's quite a cost-effective and fast way, but you can't always be sure about the effectiveness of such communication.
6.	Electronic application via the Internet resource of the Government Hotline 1545	This method is similar to the 5th one, because as with PULSE service, two-way communication is established between the complainant and a certain controlling body. In particular, this, like the previous method, is optimal in terms of time and money, but the efficiency may depend on the processing by the tax authority.

Ukraine established regional centers providing free legal aid. First of all, they ensure the participation of defence counsel during pre-trial investigation and court proceedings in cases provided by criminal procedure law to provide protection or conduct a separate procedural action in cases of detention, application of a preventive measure in the form of detention, administrative detention or administrative arrest, protection of convicts, direct, coordinate and



control the activities of local centers<sup>23</sup>.

Figure 1 provides statistics on the results of the provision of free legal aid by advocates.



Figure 1. Dynamics of the number of decisions made on the provision of free legal aid

In accordance with the above indicators, it can be concluded that free legal aid regarding advocate’s letters of enquiry in Ukraine increased by 17,813 thousand requests from legal entities and individuals compared to 2015 - 2020.

## 5. DISCUSSION

During the expert interview, we established the urgency of using the advocate’s letter of enquiry in the realities of modern Ukraine, which was confirmed by statistical information. At the same time, the surveyed experts noted that the need to give the right to public advocates to obtain information containing state secrets.

It should be noted that the special legislation quite clearly defines the range of persons entitled to provide information upon an advocate’s letter of enquiry, which is, for example, a state secret (Tokarev, 2005). Such, in particular, may be

<sup>23</sup> Wiki Legal Aid. *Advocate’s enquiry*. (2020). [https://wiki.legalaid.gov.ua/index.php/%D0%90%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82%D1%81%D1%8C%D0%BA%D0%B8%D0%B9\\_%D0%B7%D0%B0%D0%BF%D0%B8%D1%82](https://wiki.legalaid.gov.ua/index.php/%D0%90%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82%D1%81%D1%8C%D0%BA%D0%B8%D0%B9_%D0%B7%D0%B0%D0%BF%D0%B8%D1%82).

the bodies of the prosecutor's office, internal affairs, tax inspection. The results of our research are in line with the developments of modern theorists. In particular, we must agree with the statement of Chebanenko (2003). The researcher points to the unfortunate fact that the tax inspection has the right to obtain this information, while advocates (whose main function is to protect the rights and interests of the client) are deprived of such a right.

It is believed that the advocates' liability insurance will significantly ensure and protect the property interests of clients. In addition, there is an opportunity to enter into agreements with trustors with advocate's property liability for the outcome of the case. This result can be both satisfaction and refusal to satisfy the claim<sup>24</sup>.

The head of PRAVOKATOR Law Club, B. Kalyzhna, and Advocate, V. Gyrskuy, believe that the operation of the free legal aid system in Ukraine differs significantly from that of Poland<sup>25</sup>. Ukraine should make better use of the potential of its legal system while implementing European integration intentions. In particular, free legal aid in Poland is provided to the following persons:

- young people under 26,
- elderly people over 65,
- recipients of social aid,
- members of large families,
- other clearly defined categories (veterans, combatants, victims of catastrophes and accidents, etc.).

It is also worth noting that the law does not impose restrictions on access to free legal aid for non-Polish citizens. Legal aid can be provided in the form of:

- informing;
- advising on legal ways to solve problems;
- support in drafting letters/applications related to legal issues;
- drafting applications for exemption from court fees.

As for the branches of law, this aid, as in Ukraine, can be obtained in civil,

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24 Y. L. Hrabovsky Advocate's enquiry as a way to receive legal information. *Information and Law (UA)*, 2(14), 32-38. (2015).

25 Pravokator. *Exchange of international experience in providing free legal aid: Visit of Polish lawyers to Pravokator Law Club, Lviv*. (2019, May 6). <https://pravokator.club/news/obmin-mizhnarodnym-dosvidom-z-nadannya-bezoplatnoyi-pravovoyi-dopomogy-vizyt-polskyh-advokativ-do-pravovogo-klubu-pravokator-lviv/>

administrative and criminal cases. According to K. Babiak<sup>26</sup>: “The free legal aid system in Ukraine is actually one of the best legal systems in Europe and the world. This is mainly due to the large number of recipients of free legal aid. The Polish free legal aid system also has great potential, but it has little effect so far”<sup>27</sup>. Of all those eligible for free aid, only 2-3% use it. One of the main factors influencing low demand is that the range of people who can seek help is too narrow.

## 6. CONCLUSION

In conclusion, it should be emphasized once again that an advocate’s letter of enquiry is one of the tools to protect individuals and legal entities from illegal activities of government agencies and other persons, especially during military operations.

In our opinion, the advocate’s right to request certain information is one of his/her most important rights and one of the main means of obtaining legal information, despite the foreign political situation. This is even more difficult or even impossible to achieve without the quality legal aid. Unfortunately, the legal practice during the introduction of martial law notes certain problems with the full realization of the rights of lawyers. It is possible to identify a number of information and technical problems, as well as the narrow formalism of a number of official responses of government agencies. This procedure requires that an advocate’s letter of enquiry be re-submitted to the relevant authorities so that they can consider the same information (and receive a response in a short time). Unfortunately, the deadline in such a situation is quite often extended to obtain additional information upon request and to explain that the country is in a full-scale war.

It is precisely during the period of martial law that the procedure for simplifying the submission of a lawyer's appeal as a means of legal communication in the field of lawyer's activity is objectively required. Documents and their copies must be sent electronically within the specified deadline of at least 5 working days

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26 A. V. Iatsyshyn, V. O. Kovach, Y. O., Romanenko, & A. V. Iatsyshyn. Cloud services application ways for preparation of future PhD. Paper presented at the CEUR Workshop Proceedings, 2433 197-216. , (2019).

27 Pravokator. *Exchange of international experience in providing free legal aid: Visit of Polish lawyers to Pravokator Law Club, Lviv.* (2019, May 6). <https://pravokator.club/news/obmin-mizhnarodnym-dosvidom-z-nadannya-bezoplatnoyi-pravovoyi-dopomogy-vizyt-polskyh-advokativ-do-pravovogo-klubu-pravokator-lviv/>

from the date of submission. The role of an advocate's letter of enquiry in the field of advocacy is a type of communication: communication and selection of explanations, as well as obtaining information through an advocate's letter of enquiry to the relevant body. During the war, state bodies must carry out their activities clearly and fully.

The markets for advocacy and legal services in Poland and Ukraine have much in common, while being developed gradually moving to EU standards in this area. However, Poland, unlike Ukraine, has already declared a monopoly of advocates on the representation of interests in courts (with certain exceptions), which is reflected in the Law on Advocacy and Procedural Codes. Ukraine's advocacy is still facing a difficult path of reforms, which will introduce a monopoly of advocates on representing the client's interests in court, improve the guarantees of advocacy and the prestige of the legal profession as a whole. The introduction of martial law and the war forces to organize clear and quick relations between the authorities and the legal profession in all spheres of public life.

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