

Oleksandr Turchynov
Acting President of Ukraine

11, Bankova vul.,
01220 Kyiv, Ukraine

Brussels, 15 April 2014

Re: Concerns regarding incidents of serious violation of the rights of lawyers in Ukraine

Your Excellency,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which represents the bars and law societies of 32 member countries and 12 further associate and observer countries, and through them more than 1 million European lawyers. The CCBE, through its Human Rights Committee, places great emphasis on respect for human rights and the rule of law.

The recent escalation of violations of the professional rights of lawyers, as well as of their personal life in relation to their professional activities, has become a subject of serious concern for the CCBE.

We have been alarmed by recent reports from reliable sources that in several cities of Ukraine, including Kyiv, Odessa, Donetsk, Dnipropetrovsk, Poltava, Transcarpathia and Kharkiv, cases of breaches of advocates' rights and interference by the police with the independence of advocates have become frequent. The CCBE wishes to point out several examples, which have been brought to our attention (since there have been so many cases, individual incidents are not covered in this letter, but rather we have concentrated on the general principles common to the cases):

- 1) Lawyers have been subjected to harassment and violence, including while assisting their clients during questioning and other investigating actions, and lawyers' property and belongings have been damaged, including by police officials and investigators from the prosecutor's offices. Notwithstanding that in a number of cases lawyers received injuries as a result of the physical violence that was perpetrated against them, no proper investigations have been carried out and no perpetrators have been brought to justice.

Aforementioned violations concerned the following lawyers:

- Abdullaeva-Martyrosian Immileyla (Kharkiv)
- Bashuk O. (Kyiv)
- Culbych S. (Dnipropetrovsk)
- Kolesnik G.M. (Kyiv)
- Osynskiy R. (Kharkiv)
- Smaliy V.M. (Kyiv)

- 2) Searches have been conducted in the advocates' homes and offices in violation of the Law on the Bar and Advocacy. Searches were carried out without proper or any notification to the regional Bar Council; in one case, representatives of a Regional Bar were prevented from being present during the search, even though they arrived at the place of search to witness the search being undertaken; in a number of cases, searches were carried out without the court's permission and in the absence of a court decision issued upon a motion of the designated authorities; also, documents and information in electronic form were seized in breach of guarantees for the advocate's ethics in a manner that threatened professional secrecy and confidentiality.

Aforementioned violations concerned the following lawyers:

- Alekseev S.O. (Donetsk)
- Blagovidova V.K. (Sevastopol)
- Boiarchuk S.G. (Donetsk)
- Digiarenko O.M. (Donetsk)
- Kirilov D.O. (Donetsk)
- Kolesnik G.M. (Kyiv)
- Koshel V.V. (Transcarpathia)
- Shtokolova E.A. (Donetsk)
- Taranenko A.E. (Donetsk)

- 3) Criminal proceedings were initiated or conducted against lawyers in breach of the provisions of the Law on the Bar that guarantees an advocate's professional practice, including when regional bar councils were not properly, or not at all, notified of the preventive measures against advocates or of their detention.

Aforementioned violations concerned the following lawyers:

- Bashuk O. (Kyiv)
- Bugay Denis (Kyiv)
- Buglak V.V. (Poltava)
- Mamalyga A.V. (Kyiv)
- Smaliy V.M. (Kyiv)

- 4) Advocates received notifications to appear for questioning as a witness and for the conduct of other investigative actions within criminal proceedings relating to their clients' cases.

Aforementioned violations concerned the following lawyers:

- Diukel O.K. (Kyiv)
- Ganchev I.V. (Odessa)
- Matiazhova O.V. (Odessa)
- Smaliy V.M. (Kyiv)
- Vetrov A.V. (Simferopol)

- 5) An advocate was prevented from assisting her client during investigative actions.

Aforementioned violation concerned the following lawyer:

- Abdullaeva-Martyrosian Immileyla (Kharkiv)

In the light of the aforesaid, the CCBE expresses our deepest concern about the situation of lawyers in Ukraine and wishes to draw your attention to the state's obligations to ensure the proper role of lawyers in the administration of justice, and to guarantee the free exercise of the profession of lawyers, as enshrined in the [United Nations Basic Principles on the Role of Lawyers \(1990\)](#).

Particularly, Article 16 states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 19 states:

No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

Furthermore, Article 22 states:

Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

The state's obligations to guarantee the rights of lawyers are also repeated in [Recommendation N° R\(2000\)21 of the Committee of Ministers to members States on the freedom of exercise of the profession of lawyer \(adopted on 25 October 2000\)](#).

Particularly, we draw your attention to the following:

1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.

(...)

4. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.

5. Lawyers should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.

6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the Rule of Law.

In view of the above, the CCBE respectfully urges the Ukrainian authorities to take immediate and effective steps to guarantee lawyers' rights, in order to preserve the independence and integrity of the administration of justice. All necessary measures should be put in place in order to ensure that lawyers in Ukraine are able to carry out their professional activities in all circumstances, without fear of reprisal, intimidation or judicial harassment.

The CCBE also urges you to investigate all cases where lawyers were physically abused and injured or where searches of lawyers' offices and homes or other investigative actions, preventive measures and criminal proceedings against lawyers were conducted in breach of the law. All perpetrators of harassment and violence against lawyers should be prosecuted.

The CCBE urges you to take all necessary measures to ensure that the law enforcement authorities carry out their functions in full compliance with the relevant provisions of national law and with the fundamental principles of professional secrecy and confidentiality of lawyers' communications. All actions and threats against lawyers in the legitimate exercise of their professional duties should be immediately and effectively stopped.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aldo Bulgarelli', with a long vertical line extending downwards from the end of the signature.

Aldo BULGARELLI
CCBE President