

**H.E. Petro Poroshenko**  
President of Ukraine  
11 Bankova Street  
Kyiv, 01220  
Ukraine

Brussels, 6 April 2016

His 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 13 further associate and observer countries, and through them more than 1 million European lawyers.

It should be noted that the term 'lawyer' used by the CCBE corresponds to the 'advocate' in Ukraine.

I recently wrote to you to express my concerns over the killing of lawyers in Ukraine and the physical violations that lawyers are subject to. In its letter, the CCBE urged Your Excellency to launch a full and impartial investigation into these killings with a view of bringing those responsible to justice in accordance with international standards.

In addition, the CCBE has received information from the Ukrainian National Bar Association (UNBA) about numerous cases of violations of lawyers' rights in Ukraine. The CCBE strongly condemns such violations and writes to you to convey our great concern about the situation of lawyers in Ukraine.

Firstly, the CCBE would like to underline that lawyers play a vital role in the administration of justice and in maintaining and defending the rule of law, both of which are essential in a democratic society. They are central in ensuring the protection of human rights and fundamental freedoms. This has been recognised at both European and international level<sup>1</sup> as well as by abundant jurisprudence of the European Court of Human Rights. Furthermore, we wish to emphasise that lawyers, when providing legal advice or representing clients, are bound by core professional values which include, in particular, the independence of the lawyer and the right and duty of the lawyer to keep clients' matters confidential. These core values are not only fundamental to the lawyer-client relationship and the mutual trust between lawyer and client, but also to the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention on Human Rights.

## **(1) SEARCH AND SEIZURE**

Numerous cases of search and seizure have been reported to the CCBE by the Ukrainian National Bar Association in which European and national standards were not complied with. The CCBE has been informed that searches were carried out without the presence of the relevant lawyer(s) and without the presence of a representative of the relevant Regional Bar Council, as foreseen by the Law of Ukraine 'On the Bar and Practice of Law'. Furthermore, we have received reports that investigating authorities in some cases seized all documents

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<sup>1</sup> See [UN Basic Principles on the Role of Lawyers](#) of 1990; [Recommendation No. R\(2000\)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer](#), 25 October 2000

and electronic data in a law firm - shared by different lawyers - although the search warrant was issued only in the name of one lawyer. Very often, searches and seizures have been carried out without observing the principle of confidentiality. Moreover, clients' requests - who wished their lawyers to be present during the search – were disregarded by the authorities.

In connection with these cases, the CCBE would like to refer to the European Court of Human Rights (ECHR) which has examined numerous cases concerning the search and seizure of lawyers' offices and homes. This is highlighted in Article 8 'Right to respect for private and family life' of the European Convention on Human Rights. The Court held that "searches need to be accompanied by particular safeguards" and that "it is vital to provide a strict regulatory framework for such measures" since "lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law".<sup>2</sup> In particular, the Court held that it is vital to safeguard professional secrecy in the case of the search of a lawyer's office or home and the seizure of documents.<sup>3</sup> The safeguards should protect against arbitrariness and abuse.

The CCBE carried out a survey on the search and seizure of lawyer's law firms and homes in 2009/2010 and again in 2014. The survey showed that a search of a lawyer's office and/or home can only be carried out under very strict conditions, for example with issuance of a search warrant by a court, the presence of a Bar representative etc. Any seizure needs to safeguard professional secrecy. In certain countries, the search is only allowed if the lawyer is subject of a criminal investigation.

The Law of Ukraine 'On the Bar and Practice of Law' affords individuals adequate and effective safeguards against abuse. It also provides for the issuance of a court warrant, the presence of the lawyer whose offices are being searched, as well as the presence of a Regional Bar representative, and the protection of professional secrecy. However, the CCBE notes that in practice, authorities regularly disregard European and national standards.

## **(2) SUMMONING OF LAWYERS TO WITNESS AGAINST THEIR CLIENTS**

The Ukrainian National Bar Association has also reported to the CCBE that in numerous cases lawyers were summoned to testify against their clients.

In 2009/2010, the CCBE carried out a survey amongst its members concerning the professional secrecy of lawyers. As part of this survey, the CCBE asked its member Bars and Law Societies to indicate whether it was possible for lawyers to give evidence against their clients. The survey clearly showed that in the majority of countries advocates cannot and even must not give evidence in matters which have been confided to them by their client. In certain countries, the client can release the lawyer from their obligation, and in others the advocate can be asked to witness for particularly serious crimes.

The CCBE notes that Article 23, paragraph 2 of the Law of Ukraine "On the Bar and Practice of Law" specifically provides that it is prohibited to demand disclosure of data constituting professional secrecy from an advocate. Furthermore, the advocate should not be

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<sup>2</sup> See for instance, [André and another v. France](#), Application no. 18603/03, 24 July 2008, point 42:

"42. Accordingly, although domestic law may make provision for searches of the practices of lawyers, it is essential that such searches are accompanied by particular safeguards. Likewise, the Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. This is the case in particular where credible evidence is found of the participation of a lawyer in an offence (paragraph 15 above), or in connection with efforts to combat certain practices (paragraphs 17-18 above). On that account, however, it is vital to provide a strict framework for such measures, since lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law."

<sup>3</sup> In its decision in the case of [Niemietz v. Germany](#), Application no. 13710/88, 16 December 1992, the ECtHR recalled that, where a lawyer is involved, an encroachment on professional secrecy may have repercussions on the proper administration of justice and hence on the rights guaranteed by Article 6 (art. 6) of the Convention (point 37).

interrogated about such information except where a person who communicated the respective information has exempted the advocate from the duty to maintain professional secrecy as prescribed by law.

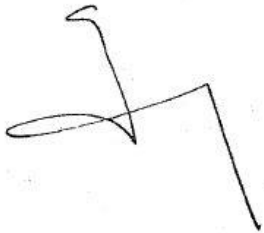
In addition, article 69(1) of the Code of Criminal Procedure provides that lawyers cannot be questioned about privileged information except when the client has released the advocate from the duty to keep professional secrets.

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We are deeply concerned about these developments and about the increasing amount of cases. These practices by the authorities are in direct contradiction with international standards of exercise of the profession of lawyer, as well as with domestic legislation. Therefore, we strongly recommend Your Excellency to take all necessary steps in order to guarantee that all relevant provisions of both international and national law are respected.

In light of the above, the CCBE respectfully urges Your Excellency to investigate the facts mentioned and to take all 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' communication. In addition, we would be most grateful if you could inform us about the measures, and the outcome of such measures, taken to improve the situation of lawyers in Ukraine.

Thank you.  
Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'M' followed by a horizontal line and a vertical line extending downwards.

Michel Benichou  
CCBE President