

Mr. Petro Poroshenko
President of Ukraine
11, Bankova Street
Kyiv, 01220
UKRAINE

Brussels, 26 March 2015

Dear President,

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. The CCBE is gravely concerned by the dramatic developments in Ukraine and I would like to express our solidarity and sympathy with the Ukrainian people.

At the same time, I would also like to raise concerns regarding the Ukrainian legislation on representing clients in courts. The CCBE has been informed by the Ukrainian National Bar Association (UNBA) that under the current Ukrainian legislation, any person in Ukraine - without legal education - can provide legal advice to clients and represent them in courts. The only exception is that criminal cases must be represented by advocates. The CCBE has also been informed that, due to this legislation many lawyers who do not practice criminal law have had their advocate status suspended in order to avoid paying fees and potential disciplinary liability. Meanwhile, they continue to provide legal services in civil, administrative and economic cases. These lawyers generally do not see any advantage of being regulated if they can provide the same services without additional obligations. The negative consequence of the current state of play is that lawyers who are not registered as advocates within the Bar are not liable for any misconduct, nor can they be disbarred for any violation of the rules of professional conduct. Since existing legislation only regulates activities of advocates, and the legal services market is not regulated at all, the right of the Ukrainian people to receive professional and qualified legal assistance is not guaranteed.

The CCBE is aware of that the UNBA is looking into possibilities to introduce 'rights of audience', in order to ensure that only advocates can represent clients in courts. This would offer security to clients, since only advocates enjoy a system of professional guarantees (e.g., independence, confidentiality, immunity to be questioned with regard to their clients' cases), which protect their clients' interests. With reference to a similar situation, I would like to mention that Finland also had no requirement for a client to be represented by a lawyer in any court until recently, when their experience with the inefficiencies that this caused prompted the government to pass a new law, implemented last year, which now requires representatives to have legal qualifications and be

supervised by the Bar. In this respect, I would like to express the CCBE's support for the Ukrainian National Bar Association position on this issue.

The legal profession plays a crucial role in a democratic society to guarantee respect for fundamental rights, the rule of law and security in the application of the law, both when lawyers represent and defend clients in court and when they give them legal advice. This has been recognised at European level, such as in the European Parliament resolution of March 2006 (European Parliament resolution on the legal professions and the general interest in the functioning of legal systems). The aims of rules governing legal services are for the protection of the general public and to guarantee the right of defence, access to justice and security in the application of the law.

Over the past several years, the CCBE has considered the issue of lawyers' representation before courts. The CCBE believes that lawyers who are qualified to appear in court best serve the interest of the administration of justice. Lawyers have the necessary competences, skills and knowledge to efficiently deal with the rules of procedure and representation, which are designed to ensure the smooth functionality of the legal system. This benefits clients, who are ensured of qualified advice, and society as a whole. Representation by non-lawyers could mean errors, unsatisfactory legal representation and more work for the courts. This could even lead to erroneous judgments. In turn, bad legal precedents affect not only the parties involved in the specific matter, but also influence matters of principle dealt with by the courts.

The concern of the CCBE and the UNBA is to ensure professional and qualified legal assistance for clients, which will be supported by provisions of the law, internal regulation of the Bar, admission to the profession, continuing professional development, and disciplinary actions. In order to ensure such a system, we understand that changes to Ukrainian legislation are required. For the reasons set out above, the CCBE would like to express its support to the Ukrainian National Bar Association in their request for qualified advocate representation in the courts.

Please do not hesitate to contact the CCBE for further information and input.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Maria ŚLAZAK', with a large, stylized flourish at the end.

Maria ŚLAZAK
President