

H.E. Mr. Petro Poroshenko
Presidential Administration of Ukraine
11 Bankova Street
01220, Kyiv
Ukraine

Brussels, 28 July 2016

RE: Violation of lawyers' professional and human rights in Ukraine

Dear Mr. President,

I am writing to you on behalf of the Council of Bar and Law Societies of Europe (CCBE), which represents the bars and law societies of 45 countries, and through them more than 1 million European Lawyers.

The CCBE has already written to you previously, on 5 April 2016, to express our concerns over the assassinations of lawyers Yuri Grabovski, Viktor Loiko, Oleksandr Gruzkov and Yuriy Ignatenko. We asked then for a thorough and independent investigation of those crimes, stressing the importance of guaranteeing that all lawyers in Ukraine are able to perform their professional duties without fear of reprisal, hindrance, intimidation, or harassment.

In another letter from 6 April 2016, we brought to your attention cases of search and seizure reported to us by the Ukrainian National Bar Association, which demonstrate non-compliance by the concerned authorities with the European and national standards when conducting search and seizure activities. In the same letter, we also raised concerns about cases where lawyers had been summoned to testify against their clients.

In response to the above mentioned letters, your office informed us that they had been transferred to the Office of the Prosecutor General of Ukraine, the National Police of Ukraine, the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine and the State Fiscal Service of Ukraine. So far, we have received replies from the Office of the Prosecutor General of Ukraine, the National Anti-Corruption Bureau of Ukraine and the State Fiscal Service of Ukraine, which we greatly appreciate. However, none of them makes any reference to the cases we mentioned in our letters.

Our understanding is that since then the situation has not improved, as the Ukrainian National Bar Association has informed us of new abuses. The list of violations that came to our attention includes, but is not limited to: physical violence, violation of human and professional rights, unlawful search and seizure, refusal of an access to a client, unlawful wiretapping and identifying a lawyer with a client.

THREATS AND PHYSICAL VIOLENCE AGAINST LAWYERS IN CONNECTION WITH THEIR PROFESSIONAL ACTIVITIES

The Ukrainian National Bar Association has brought to the attention of the CCBE multiple cases of threats against lawyers, and of pressure being exerted on lawyers. Moreover, there are cases of physical violence in connection with their professional activities. According to our information, a

lawyer, Mr. Garmash, was assaulted by men carrying firearms at his premises. Another example is a case of Mr. Sitnikov, a lawyer who was assaulted by unidentified people in connection with his professional activities. To our knowledge, Mr. Sitnikov provides legal aid to a local initiative that opposes an unlawful construction project. In addition to multiple threats received against him, he was once assaulted after he participated in a meeting of the initiative.

Given the above, the CCBE wishes to draw your attention to the United Nations Basic Principles on the Role of Lawyers and, in particular Principles 16 to 18 on Guarantees for the functioning of lawyers. It should be underlined that the role of governments is especially important in this respect as they *“shall ensure that lawyers a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”*.

REFUSAL TO A LAWYER WITH SPECIAL NEEDS TO MAKE NECESSARY ACCOMODATION

We have also been informed by the Ukrainian National Bar Association that a lawyer with a first-degree disability of eyesight, – Mr. Rokytskyi, who provides legal advice in criminal matters, was denied the special assistance required for him to be able to exercise his professional duties. Due to his disability, the lawyer had intended to record the questioning. However, he was prohibited from doing so by an investigator who also used brute force against the person accompanying the lawyer.

In our view, the actions of the investigator would amount to discrimination on the grounds of disability under Article 14 of the European Convention on Human Rights (ECHR), to which Ukraine is a party. Other international instruments envisaging the need to protect people with disabilities from discriminatory treatment which should be noted are: Recommendation 1592 (2003) towards full social inclusion of people with disabilities of the Council of Europe and the United Nations Convention on the Rights of Persons with Disabilities, and in particular Article 5, which advocates for equality and non-discrimination, and Article 21, which promotes freedom of expression and opinion, and access to information.

SEARCH AND SEIZURE

The UNBA also reported to the CCBE new cases of unlawful search and seizure of advocate’s privileged documents. From the information available to us, we understand that on 5 July 2016, detectives from the Main Detective Division of the National Anti-Corruption Bureau of Ukraine, together with prosecutors of Specialised Anti-Corruption Prosecutor’s Office, conducted multiple searches of advocates’ offices. We understand that, in addition to the violation of procedural requirements by the judge-investigator who issued a search warrant, during such searches, NABU detectives illegally accessed, reviewed, read, took notes and familiarised themselves with advocates’ dossiers that contained privileged information. It should be noted that they also accessed, read and took note of privileged documents which had no connection to the case under investigation.

In the light of this, the CCBE would like to reiterate its concerns expressed in the letter of 6 April 2016, and emphasise them with references to the jurisprudence of the European Court of Human Rights (ECHR). In particular, in its judgement *André and Another v. France*, 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”.¹ In another judgement, *Niemitz v. Germany*,¹ 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.² The safeguards should protect against arbitrariness and abuse. The Law of Ukraine ‘On the Bar and Practice of Law’ also affords adequate and effective safeguards in this respect. By virtue of ss.4 of s.1 art. 23 of this law, it is thus “prohibited to examine, disclose, demand procurement of or seize documents relating to the practice of law”.

REFUSAL OF AN ACCESS TO A CLIENT

We also received information about cases where lawyers were denied access to their client. This is in clear contradiction to the Principle 1 of the Recommendation No. R(2000)21 of the Council of Europe, which states that “*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.*”

WIRETAPPING OF LAWYER

In addition, we learnt about cases of unlawful wiretapping of lawyers, which amounts to interfering with private conversations between client and their lawyer. As stated by the Principle 22 of the United Nations Basic Principles on the Role of Lawyers, “*governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential*”. It is also envisaged by the Recommendation No. R(2000)21 of the Council of Europe that “*all necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship*”. In addition, interfering with private conversations between a client and their lawyer is prohibited under ss.9 s. 1 of art. 23 of the Law of Ukraine ‘On the Bar and Practice of Law’.

IDENTIFYING LAWYERS WITH THEIR CLIENTS

Finally, the Ukrainian National Bar Association reported that there are instances of identifying lawyers with their client. This practice contradicts Principle 18 of the United Nations Basic Principles on the Role of Lawyers, which explicitly urges against identifying lawyers with their clients. It is also in violation of the national legislation and namely, ss. 16 of s. 1 art. 23 of the Law of Ukraine ‘On the Bar and Practice of Law’.

Given the crucial role of lawyers in the administration of justice, and in the maintaining and defence of the rule of law, the CCBE wishes to condemn the aforementioned violations. It is a matter of special concern that, in many instances, it is law enforcement authorities that abuse lawyers’ rights. In this

¹ See for instance, [André and Another v. France](#), Application no. 18603/03, 24 July 2008, point 42:

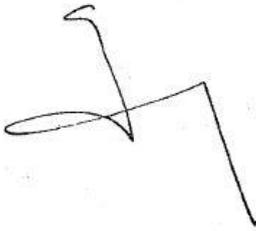
“42. Accordingly, although domestic law may make provision for searches of the practices of lawyers, it is essential that such searches are accompanied by particular safeguards. Likewise, the Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships 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.”

² 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).

Le Président
The President

context, it is particularly important to safeguard lawyer's rights, as their violation will inevitably have an impact on the right of Ukrainian citizens to a fair trial, as enshrined in the European Convention of Human Rights. The lawyers are central in ensuring the protection of human rights and fundamental freedoms. Therefore, the CCBE respectfully asks you to investigate the facts mentioned above, and to take all measures to prevent future abuses.

Yours sincerely,



Michel Benichou

CCBE President

CC: Office of the Prosecutor General of Ukraine, National Anti-Corruption Bureau of Ukraine.

[ANNEX 1](#) – CCBE Letter dated 5 April 2016

[ANNEX 2](#) – CCBE Letter dated 6 April 2016

ANNEX 1

CCBE Letter dated 5 April 2016



Le Président
The President

H.E. Mr. Petro Poroshenko
Presidential Administration of Ukraine
11 Bankova Street
Kyiv, Ukraine 01220

Brussels, 5 April 2016

Re: Concerns over the killing of lawyer Yuri Grabovski, and the situation of Oksana Sokolovskaya and Ukrainian lawyers

Your Excellency,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which, through the national Bars and Law Societies of the Member States of the European Union and the European Economic Area, represents more than 1 million European lawyers. In addition to membership from EU bars, it also has observer representatives from a further thirteen European countries' bars. The CCBE places great emphasis on respect for human rights and the rule of law, and is particularly concerned with the situation of human rights defenders around the world.

The CCBE wishes to condemn the recent murders of lawyers in Ukraine, particularly that of Yuri Grabovski. The CCBE is additionally concerned over the situation of Oksana Sokolovskaya, a Ukrainian lawyer representing Russian citizen Yevgeny Yerofeyev.

We understand that Yuri Grabovski was last seen on 6 March 2016, when he left his office with an unknown man. On 25 March, his body was found bearing gunshot wounds. Mr. Grabovski was representing Russian citizen Aleksandr Aleksandrov, who was captured along with Yevgeny Yerofeyev in May 2015 following a battle between Ukrainian and separatist forces. Both men were accused of being Russian military servicemen. Mr. Grabovski's murder was the second assassination of a lawyer in 2016, following Viktor Loiko's death in early March. In 2015, lawyers Oleksandr Gruzkov and Yuriy Ignatenko were killed, and Oleksandr Vyshnevyy was brutally assaulted twice. According to our information, considering the violence targeting lawyers in Ukraine, Oksana Sokolovskaya was recently granted state protection – but no effective measures have been taken. In addition, a month after beginning work on Yevgeny Yerofeyev's case, the lawyer was accused of causing grievous bodily harm during a domestic dispute dating back to July 2014. Ms. Sokolovskaya claims that the case is fabricated aiming to prevent her from defending her client. The case is still ongoing.

In this context, the CCBE wishes to draw to your attention the Principle of the United Nations Basic Principles on the Role of Lawyers (attached), in particular Principles 16 to 18 on Guarantees for the functioning of lawyers.

In view of the above, the CCBE respectfully urges your Excellency to take effective steps to ensure that the murders of Yuri Grabovski, Viktor Loiko, Oleksandr Gruzkov, and Yuriy Ignatenko are thoroughly and independently investigated, that the safety and security of Oksana Sokolovskaya are guaranteed, and that the charges against her are dropped. In addition, the CCBE asks you to guarantee in all circumstances that all lawyers in Ukraine are able to perform their professional duties without fear of reprisal, hindrance, intimidation, or harassment.

Yours sincerely,

Michel Benichou
President

ANNEX

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take

special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. 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.

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

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. 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.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

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

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

ANNEX 2

CCBE Letter dated 6 April 2016



Le Président
The President

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 level¹ 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

¹ 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

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

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Rue Joseph II, 40/8 – B 1000 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11 – E-mail ccbe@ccbe.eu – www.ccbe.eu

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".² 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.³ 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

² 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."

³ In its decision in the case of [Niemietz v. Germany](#), Application no. 13710/88, 16 December 1992, the ECHR 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).

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

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Rue Joseph II, 40/8 – B 1000 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11 – E-mail ccbe@ccbe.eu – www.ccbe.eu

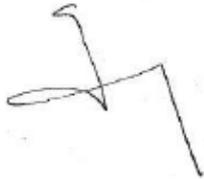
interrogated about such information except where a person who communicated the respective information has exempted the advocate from the duty to maintain professional secrecy as prescribed by law.

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.

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,



Michel Benichou
CCBE President