



**UKRAINIAN NATIONAL  
BAR ASSOCIATION**



**VIOLATION**  
**OF ATTORNEYS' PROFESSIONAL RIGHTS AND**  
**GUARANTEES IN UKRAINE**

**IN THE PERIOD OF 2013-2016**

**Report adopted by the Bar Council of Ukraine on 26 February 2016**



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## INTRODUCTION

Despite the existence of numerous European and international standards, which enshrine attorneys' professional rights and guarantees, implementation of those standards in the legislation of Ukraine, certain achievements in the protection of human rights and practice of law in Ukraine since 2012, the practice of the last three years has witnessed that such achievements have not, apparently, satisfied some officials of law enforcement authorities and, starting from mid-2013, attorneys began to experience increasing pressure and persecution in their work on the part of those officials.

The Ukrainian National Bar Association takes all possible measures to stop violations of attorneys' professional rights and guarantees. To this end, the UNBA has prepared this Report to draw the attention of both the domestic professional community, the government of Ukraine (the President of Ukraine, the Prosecutor General of Ukraine, the Minister of Interior), the judiciary and international professional community to the facts of flagrant violations of attorneys' professional rights and guarantees in Ukraine, which threaten the right to defence and the right to a fair trial in Ukraine, respect for human rights and effective practice of law by attorneys.

The Report also includes the UNBA key findings and proposals for the rapid elimination of violations of attorneys' professional rights and guarantees and, as a consequence, for the strengthening the protection of human rights and the rule of law in Ukraine.

This Report was approved by the decision no. 2 of the Bar Council of Ukraine on 26 February 2016. It describes in detail the violations of attorneys' professional rights and guarantees for the period between 2013 and early 2016.



# I. INTERNATIONAL AND NATIONAL STANDARDS OF ATTORNEYS' PROFESSIONAL RIGHTS AND GUARANTEES

The standards of the Council of Europe, of which Ukraine is a member since 1995, and the case law of the European Court of Human Rights call for ensuring at the national level a professional freedom of attorneys, since their independence and professional competence are an institutional tool of assertion and protection of human rights. A strong and independent Bar capable of preventing arbitrariness in the use of power is a key element of the legal system in a mature democratic society.

The independence of the Bar is an essential guarantee for the enforcement of human rights and is crucial for receiving high-quality legal assistance. Attorney's professional freedom means the absence of any external influence, including undue influence by the judge, prosecutor or judicial officers.

A key element of the rule of law is the preservation of the system of checks and balances in order to guarantee that no participants, including judges and representatives of state institutions, could dominate in the court proceedings.

The Bar is called to "balance" other participants in the court proceedings (judges and prosecutors) to ensure the legitimacy of, and confidence in the judicial system. Attorneys should be given every opportunity to question and verify evidence gathered by the prosecution.

Equality of arms is an essential element of fair court proceedings, which means that each party to proceedings should have a reasonable opportunity to present the case to the court in conditions, which do not create any benefits to the opposing party. Reliability of a well-modelled criminal justice system should be based on procedural fairness.

Relevant standards have also been established by the International Bar Association (1990) in order to resolve the task of enhancing the role and importance of attorneys. These standards should be taken into account by the governments in the process of elaboration of national legislation and practice of its application, and which should be taken into account by all attorneys, judges, representatives of the executive and legislative powers, and by the society as a whole. They include, inter alia, the following:

- \* It is essential to establish conditions, in which all persons shall have effective and prompt access to legal services provided by an independent lawyer of their choice to protect and establish their legal, economic, social, cultural, civil and political rights;

- \* Professional associations of lawyers have a vital role to uphold professional standards and ethics, to protect their members from improper restrictions and infringements, to provide legal services to all in need of them, and to co-operate with governmental and other institutions in furthering the ends of justice;

- \* Subject to the established rules, standards and ethics of the profession the lawyer in discharging his or her duties shall at all times act freely, diligently and fearlessly in accordance with the legitimate interest of the client and without any inhibition or pressure from the authorities or the public;



<sup>1</sup>Freedom to exercise of the profession of lawyers: CoE Committee Ministers Rec. (2000) 21.

<sup>2</sup>De Haes and Gijssels v. Belgium, № 19983/92, 27 February 1997.

<sup>3</sup>Benham v. the United Kingdom, № 19380/92, 10 June 1996.



\* The lawyer is not to be identified by the authorities or the public with the client or the client's cause, however popular or unpopular it may be;

\* No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client's cause;

\* No court or administrative authority shall refuse to recognize the right of a lawyer qualified in that jurisdiction to appear before it for his client;

\* A lawyer shall have the right to raise an objection for good cause to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.

Lastly, the UN Basic Principles on the Role of Lawyers (1990) envisage, inter alia:

"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".

As far as the Ukrainian legislation is concerned, the Law of Ukraine "On the Bar and Practice of Law" (2012), taking into account the above-mentioned international standards and principles on the role of lawyers and recommendations of the Council of Europe on the matter, provides for the rights, duties and guarantees of practice of law. In particular, Article 23, insofar as relevant, reads as follows:

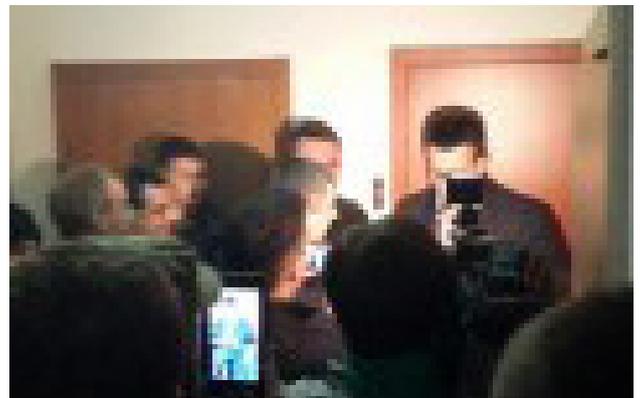
«1. Professional rights, honor and dignity of an attorney are guaranteed and protected by the Constitution of Ukraine, this Law and other laws, in a variety of ways, in particular:

1) it is prohibited to interfere with or impede practice of law;

2) it is prohibited to demand disclosure of data constituting attorney-client privilege from an attorney, an assistant attorney,

<sup>4</sup>IBA Standards for the Independence of Legal Profession (1990); <http://www.ibanet.org/Document/Default.aspx?DocumentUid=f68bba5-fd1f-426f-9aa5-48d26b5e72e7>.

<sup>5</sup>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; <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.





attorney's trainee or a person in employment relationship with an attorney, law office, law firm, as well as from a person whose right to practice law was suspended or terminated. None of them may be interrogated about the information except where a person who communicated the respective information has exempted the said persons from the duty to maintain attorney-client privilege as prescribed by law;

3) search operations or investigative actions that require special court permission shall be conducted in relation to an attorney on the basis of the respective court decision made upon the motion of the Prosecutor General of Ukraine, his/her deputies, prosecutor of the Autonomous Republic of Crimea, the region or the cities of Kyiv and Sevastopol;

4) it is prohibited to examine, disclose, demand procurement of or seize documents relating to the practice of law; (...)

16) it is prohibited to identify an attorney as his/her client;

17) any disciplinary proceedings against an attorney shall be conducted under the specially established procedure. Specific features of certain investigative actions and of injunctive measures in criminal proceedings against an attorney are determined in part two of this Article.

2. In the event of a search or inspection of an attorney's residence, other possessions or premises where he/she practices law, or in the event of a temporary access to the attorney's belongings and documents, the investigating judge or the court shall always specify in their decision the list of items and documents to be found, discovered or seized in the course of conduct of the investigative action or of application of an injunction in the criminal proceedings, and shall also take into account the requirements of paragraphs 2-4, part one of this Article.

Presence of a representative of the regional bar council is required during a search or inspection of the attorney's residence, his/her other possessions or premises where he/she practices law, as well as during temporary access to the attorney's belongings and documents, except for the cases provided for by paragraph four of this part. In order to ensure participation of the said representative, the officer who is to conduct the respective investigative action or apply an injunction in the criminal proceedings shall give prior written notice thereof to the regional bar council at the location where such procedural action is to be conducted.

In order to ensure compliance with the requirements of this Law regarding non-disclosure of attorney-client privilege, the representative of the regional bar council shall be granted the right during the said procedural actions to put questions, submit his/her comments and objections as regards the manner of taking the procedural actions, which all must be recorded in the protocol” .

To ensure implementation of the above guarantees provided for by the domestic law, the Criminal Code of Ukraine (“CC”) envisages criminal liability for:

– violation of the right to defence by preventing access, or failure to timely provide access to a defender, and other serious violations of the right to defence of a suspect, accused or defendant committed by an investigator, prosecutor or judge (Article 374);

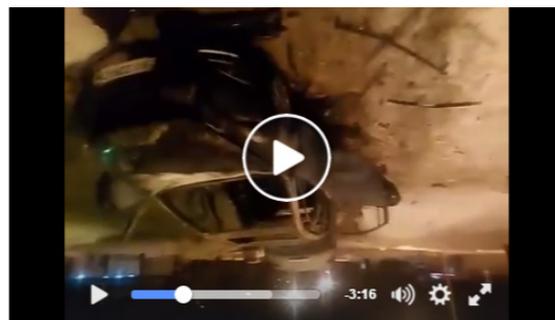
– interference with the activities of a defence attorney or a representative of a person by putting any form of obstacles to the exercise of lawful activities by a defence attorney or a representative of a person in provision of legal assistance, or violation of statutory guarantees of their work and attorney-client privilege (Article 397);

– threats of murder, violence or destruction or damage to property in respect of a defence attorney or a representative of a person or their close relatives in connection with the activities related to provision of legal assistance (Article 398);

– deliberate destruction or damage to property belonging to a defence attorney or a representative of a person or their close

relatives, in connection with activities related to provision of legal assistance (Article 399);

– attack to life of a defence attorney or a representative of a person in connection with activities related to provision of legal assistance (Article 400).



Александр Шадрин  
около месяца назад  
Разрушен автомобиль адвоката Шадрина Александра Сергеевича





## II. VIOLATIONS OF ATTORNEYS' PROFESSIONAL RIGHTS AND GUARANTEES IN UKRAINE

The Constitution of Ukraine guaranteed the right to defence to every person under the jurisdiction of Ukraine and the legal profession exists for the implementation of that right. In 2012 the legislation Ukraine provided for more rights to, and guaranteed equality of attorneys in criminal proceedings with other parties. Starting from 2012, the number of acquittals has started to increase sharply, a preventive measure in the form of detention has been used more rarely, the number of cases of tortures and the use of violence on the part of investigators during detention has decreased, persons participating in criminal proceedings have become more secure.

These obviously positive developments have not satisfied certain law enforcement officials, and starting from mid-2013, attorneys have begun to experience increasing pressure and persecution in their work on the formers' part.

The Ukrainian National Bar Association ("UNBA") through the system of the bar self-government is taking all possible measures to stop violations of attorneys' rights; many attorneys also participate in the protection of their colleagues on a voluntary basis. Yet, the legislative safeguards protecting the legal profession have been offset by the lack of practice of a thorough investigation of all facts and real attacks and the lack of punishment of those who committed crimes against attorneys in connection with their professional activities.

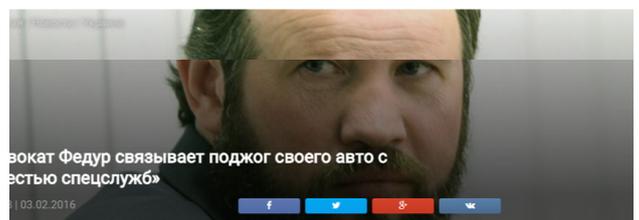
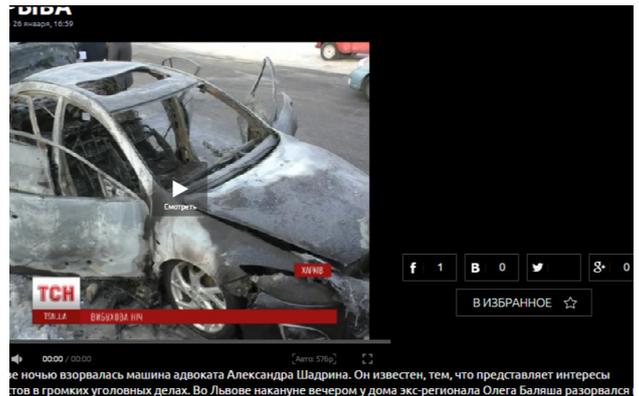
Creation of obstacles to proper performance of duties by attorneys in their clients' cases leads to a violation of the constitutional right to legal assistance, which is crucial in the enjoyment of the right to a fair trial.

No state governed by the rule of law can exist without ensuring the right to defence (legal assistance). In the state governed by the rule of law the authorities are obliged to respect a person, not to violate his or her rights, ensure legal assistance to him or her and to hold accountable those responsible for human rights violations.

A negative trend, which suggests the increasing risks and new threats for legal profession, leads to the fact that attorneys' work ceases to be effective and safe, the confidentiality of defence is breached, all this having grave consequences for the enjoyment by clients of their right to defence, respect for their private life, and so on. Violation of the right to defence in the light of violations of attorney's professional guarantees leads to the loss of confidence in the instruments of protection and, in general, in the judiciary of Ukraine.

Violent unlawful actions of certain law enforcement officers in respect of attorneys put in doubt the effectiveness of the reform of the Ukrainian law enforcement system, speak about the lack of knowledge of laws by the "new" police officers and prosecutors, inability to collect evidence and to submit them to the court, and encroachment on human rights.

In cases where unlawful acts in relation to attorneys were committed by other persons, law enforcement officials do not react to official complaints about threats to life, health, honour and dignity of attorney and his or her family which, according to the legislation, is a crime. However, this finds no appropriate legal assessment on the part of relevant officials.



**В результате взрыва пострадавших и разрушений нет, полиция собрала улики на месте поджога кроссовера**



Известный украинский адвокат Андрей Федур, ведущий ряд резонансных дел, в числе и дело подозреваемых в убийстве журналиста Олеса Бузины Анж Медведько и Дениса Полищука заявил о том, что считает поджог св автомобиля элементарной мстостью со стороны спецслужб. Об этом г-н Федур заявил во вторник, 2 февраля, в комментарии УНИАН.



This Report does not cover all violations against attorneys, but rather depicts the loudest facts of reprisals against them, pressure on them, and unacceptable interference with their professional activities and putting obstacles in provision of high-quality legal assistance to clients. All these facts have been duly documented and are considered a form of oppression of human rights in Ukraine and a threat to democracy. They can also be viewed as such that contain features of a totalitarian police regime in Ukraine at this stage of its development.

The following is the specific types of violations of attorneys' professional rights and guarantees in Ukraine for the period between mid-2013 and early 2016.

## 1. Murders and other attacks on attorneys' lives

The attorneys' community was deeply concerned by the appalling murders and attacks on their colleagues' lives, which took place in 2015. Although more than one year has passed since those terrible events, perpetrators have not been brought to justice yet.

Thus, on 19 January 2015 Mr Oleksandr Gruzkov, an attorney from Kharkiv with 20 years' experience, was murdered. He was shot to his head just in the downtown; criminologists found seven shells at the scene of crime. One of the versions of the attorney's murder highlighted in the newspaper "Komsomols'ka Pravda" was his activity as an attorney, but this version has not been paid any attention by investigators.

On 20 March 2015 a wife of attorney Yuriy Ignatenko applied to the police and made a declaration on the disappearance of her husband. On 24 March the attorney's body was found by the locals near the village Pukhivka, Kyiv region. Traces on the body spoke about a violent death. Criminal proceedings were instituted under article "Premeditated murder". The edition "Vesti" stated that the cause of the murder was the attorney's professional activity. Prior to that, on 18 March 2015 the attorney won a very complicated lawsuit in Boryspil, which he had pursued for four years. It was a property dispute concerning an apartment of an elderly woman, whom Mr Ignatenko represented in the court. He was kidnapped in the centre of Boryspil, which was seen by eyewitnesses. Investigators established a person suspected of ordering the murder.

On 10 July 2015 a brutal attack on attorney Oleksandr Vyshnevyy (Kyiv region) was made by two unknown persons, who cruelly beat him near his office. Those who attacked the attorney wore masks. They beat him severely on the head and the body with a metal bar. The attorney was lucky enough to defend himself and to escape. The attorney himself links the attack to the fact that he represents injured parties in a road traffic accident with a route bus at Gostomel highway. The attorney took an active position and provided comments to media about the unlawful activities of a carrier. On 25 August 2015 Mr Vyshnevyy was assaulted again. This time the attorney received stab wounds on his chest. Injuries were inflicted from behind, so that the attorney could not see the assaulter.

## 2. Criminal prosecution of attorneys

Over the last two years, investigators have invented a way to "get rid" of a professional attorney in criminal proceedings, having falsified materials, according to which an attorney himself becomes a suspect, and throw him or her to jail, having applied to the court with a request for adopting a preventive measure in the form of



ЦЕНЗОР.НЕУ

21684 посетителя | 229 тем | 15908 комментариев

Украинские заложники в РФ Суд над полицейским Олийныком Блокада Мажоры на дорогах Репрессии в оккупированном Крыму Бунт на Широком

Форум Украины (#07372)

Тему создал: Александр Власов 7c584638

14.02.16 16:50 Промежуточные итоги журналистского расследования по факту нападения на адвоката

Факты, которые стали известны в ходе расследования, указывают на возможную причастность к организации преступления Юрия Работина - председателя одесской организации Национального союза журналистов

Напомним, что 09.02.2016 в период с 10:30 до 10:41 возле офиса адвокатской компании «РЕДУТ» находилась группа лиц в тактической одежде. Один из участников этой группы причинил адвокату Евгению Тарасенку телесные повреждения. После совершения преступления двое неизвестных скрылись в неизвестном направлении. Организатором преступления оказался Владимир Дмитриенко, который был задержан адвокатом Тарасенко и ещё одним сотрудником компании.

По факту совершенных правонарушений было возбуждено уголовное дело в рамках ст. 398 УК



жкат Чудовський вимагає від ГПУ та МВС розслідувати справу про підпал автомобіля [відео]

YouTube UA

ДК выгнал из суда адвоката КОБРЫ



detention. The court usually allows such requests, because it is not independent either; judges themselves are in fear of criminal prosecution and the uncertainty hanging over them due to the lack of clarity in the government's actions as regards the judicial reform.

Unlawful service of notices of suspicion to attorneys, detention of attorneys and adoption of preventive measures in respect of them take place in breach of the law and in disregard of special procedures of conducting procedural actions in respect of attorneys. Attorney is identified with his or her client, which is totally unacceptable.

Attorneys are accused of committing serious crimes only on the grounds that they learned information, which represents attorney-client privilege, and that they efficiently defend a client, investing all their powers and knowledge in a case.

In particular, in July 2013 a bail was set in respect of the attorney Sergiy Petrenko; the amount of the bail was three times higher than the maximum amount provided by the Code of Criminal Procedure of Ukraine ("CCP"). In adopting the preventive measure, the court did not notify a relevant self-government body of the bar (regional bar council), as required by the Law of Ukraine "On the Bar and Practice of Law".

In October 2013 criminal proceedings were instituted and a preventive measure was chosen in respect of the attorney A. Mamalyga. The reason for prosecuting the attorney was the fact that the real suspect allegedly used his name to tell his own name. After the UNBA numerous requests to stop illegal actions regarding criminal proceedings against the attorney, the proceedings were discontinued and the preventive measure lifted. Following the results of the official investigation, the investigator was dismissed from his post. Nobody was brought to responsibility for prosecution of the attorney and falsification of criminal proceedings against him.

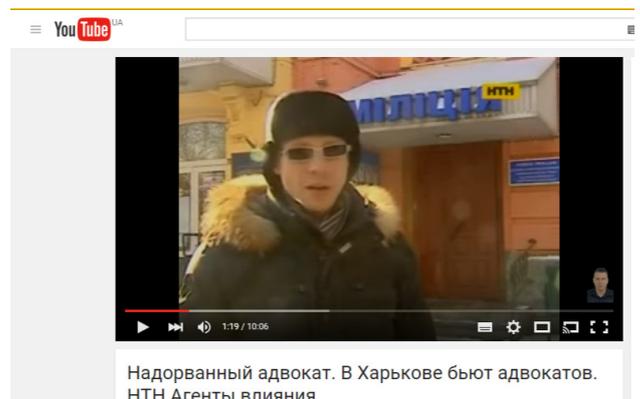
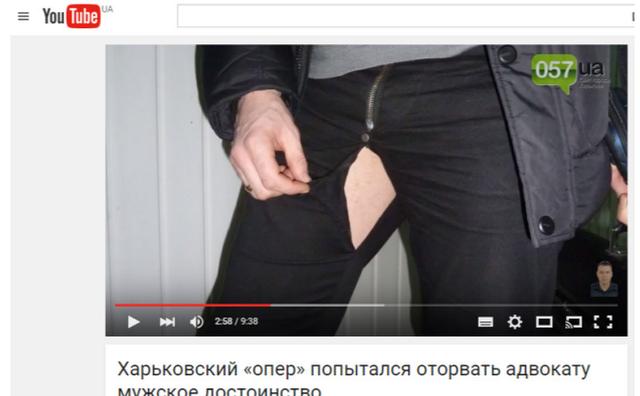
In November 2013 criminal proceedings against the attorney Igor Cherezov were instituted with the aim of damaging his reputation and obstructing his activities. Details about the institution of criminal proceedings were sent by e-mail to about 300 persons.

In December 2013 Mr Viktor Smaliy, defender of the Maidan activist A. Dzynzha, was arrested. The attorney remained in jail for a long time. The reason for the institution of criminal proceedings against Mr Smaliy was his harsh and uncompromising attitude in defending his client; he demanded justice and a fair lawful judgment in respect of his client, who came to the Maidan to protest against the criminal government of Mr Yanukovych.

In December 2013 the attorney A. Nasykovskyy was also arrested in violation of the CCP and the Law "On the Bar and Practice of Law". A preventive measure in the form of detention was chosen in respect of him. The UNBA was informed about this detention by Mr O.I. Savchenko, deputy governor of the Kyiv SIZO (detention centre).

In March 2014 the UNBA received a complaint from the attorney P.A. Vykhov stating that criminal proceedings were fabricated in respect of him, as a result of which he was deprived of the right to pursue professional activities.

In January 2015 Mr S.B. Bozhylo, senior investigator for particularly important cases of the Prosecutor-General's Office ("PGO"), in violation of Article 23 of the Law of Ukraine "On the



### К Корбану в СИЗО не пустили адвокатов и нардепов

Новости Украины • Политика 01.11.2015 - 20:14





Bar and Practice of Law” and Articles 480 and 481 CCP, issued a notice of suspicion. This case once again demonstrated that when a high-profile case is investigated or when the interests of politicians are involved, this gives grounds for ignorance of the law and, as a result, no one is held liable.

In March 2015 the UNBA learned from the media about a detention of the attorney Denys Gordeyev on suspicion of committing a crime under Article 115 CC. The news and media contained affirmative statements by senior officials, including the President of Ukraine, that Mr Gordeyev was a murderer, which in turn was a gross violation of presumption of innocence - a fundamental principle of the state governed by the rule of law. On 27 March 2015 the UNBA sent a letter to the PGO, stating that the detainee is an attorney and that investigative actions should be conducted in compliance with the requirements of Articles 480 and 481 CCP.

Since January 2016 and until the date of adoption of this Report, the prosecutor of the Kyiv region, by conducting certain investigative actions in the framework of criminal proceedings instituted under Article 121 CC, has put pressure on the attorney O.V. Sokolovska – a defender of Mr Y.V. Yerofeyev, a Russian citizen. The attorney was serviced with a notice of suspicion and interrogated as a suspect.

The Bar of Ukraine demands the law enforcement authorities not to breach the rules of criminal procedure, no matter what crime an attorney may be suspected of or accused in, to conduct interrogation and access attorney-client privilege in full compliance with legal provisions and guarantees set forth by law.

### 3. Physical violence against attorneys

Most physical violence against attorneys is committed by the law enforcement officers, who beat attorneys in police stations, in their offices, and even in front of witnesses and clients. The reason behind such unlawful conduct is to intimidate an attorney so that he or she withdraws from the case (because, if police beats an attorney, what can a common man expect from it); to prevent attorney from meeting with his or her client (violation of the right to defence); to illegally obtain documents including attorney-client privilege, etc. The Report reflects only a fraction of such violations, which indicates how attorneys put to risk their lives, health and property in order to perform their duties towards their clients.

For example, in June 2013 Mr A.I. Grygorenko, one of the heads of Bila Tserkva police (Kyiv region), unlawfully and violently attempted to take documents and phone from the attorney V. Smaliy, having inflicted bodily injuries on him. The illegal actions of the above officer related to the attempts to get access to attorney-client privilege. Neither the Ministry of Interior, nor the prosecutor’s office responded to the UNBA numerous inquiries regarding the conduct of investigation and referral of case materials to court. The law enforcement authorities have not given any proper assessment of the facts of illegal attack on the attorney and of the proof thereof; the investigation was not conducted properly. On 25 December 2013 the UNBA received an answer from the prosecutor’s office of the Kyiv region to the effect that criminal proceedings were discontinued due to the absence of a crime, namely, the fact of receipt by the attorney of any injuries, because the beating was not proven.

In October 2013 the attorney M.M. Biryuk came to the Kyiv SIZO to provide legal assistance to his client upon the assignment issued by the secondary legal aid centre. The officials of that





institution used physical force against him in order to prevent him from meeting with the client. The SIZO employees used obscene language in respect of the attorney. This fact is the evidence that the officials of the Kyiv SIZO, by preventing the attorney from meeting with his client, committed an offense. Yet, the perpetrators have not been held accountable for the interference with the professional activities of the attorney and inflicting injuries on him.

In November 2013 Mr V.O. Gnidyy, investigator from the district police department in Kharkiv, inflicted light bodily injuries on the attorney I. Abdullayeva-Martirosyan. The investigator inflicted bodily injury on the attorney when she performed her professional duties on behalf of the Kharkiv regional centre of secondary legal aid. The officials of the above department intimidated the attorney and put pressure on her. Mr V. Kolmyk, first deputy head of the police department, with the aim of continuing putting pressure on the attorney and forcing her to withdraw from the criminal proceedings as a defence counsel, applied to the Qualification and Disciplinary Commission of the Bar (“QDCB”) of the Kharkiv region, and then to the Higher Qualification and Disciplinary Commission of the Bar (“HQDCB”), with a complaint against the attorney. However, the investigator’s complaint against the attorney was dismissed as ungrounded.

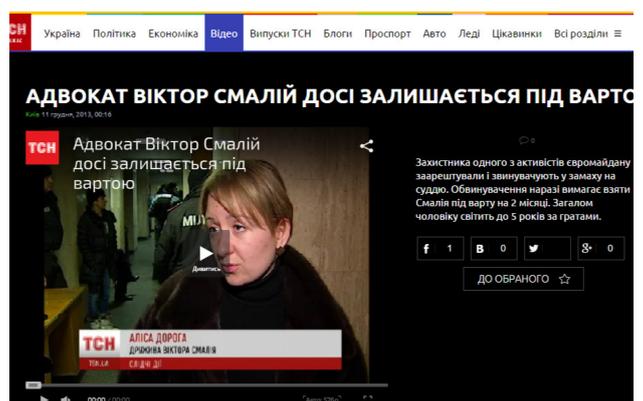
The same month, while the attorney O.G. Bashuk was providing legal assistance in the client’s office, five unidentified persons inflicted light injuries on him. The investigator A. Mzyuk concealed the fact of signature of the protocol by Mr Bashuk and consequently entered the data into the Unified Register of Pre-trial Investigations that information was put into the protocol by an unidentified person on an unknown date, which constitutes a fabricated action.

On 14 January 2014 the attorney R. Osynskyy was attacked by a police officer of the Leninskyy district department of police in Kharkiv, just in front of his client. First, this officer commenced procedural actions with the attorney’s client in breach of the law, and when the attorney commented on inadmissibility of his arbitrary behaviour, the police officer used physical force in respect of the attorney. The client was very frightened and one minute later ran out from the investigator’s office saying: “If they behave like this with the attorney, what can I expect”?

In February 2014 the attorney Y.I. Anokhina, while leaving her car, was attacked and kidnapped by four armed men in overalls – black masks and bullet-proof vests (as it became known later, those were a personnel of “Alpha” special forces in Kyiv). On the way to the office, those persons put psychological pressure on the attorney and threatened her. According to the attorney, the investigator from the Lychakivskyy District Police in the Lviv region instituted criminal proceedings.

On 25 July 2014 the attorney Oleg Belyaev, while participating in the conduct of a procedural action in Rokitne district (Kyiv region), was attacked by unknown persons. After the attack, the attorney also noticed that his mobile phone was stolen, most probably by the assaulters. The police officers, who were present during the incident, did nothing to defend the attorney and the police squad, which was called by the attorney, has never arrived.

In September 2014 the governor of the Bucha correction colony (Kyiv region) inflicted injuries on the attorney Ganna Kolesnyk. His actions were caused by the fact that the attorney demanded a meeting with a client, who was illegally transported from the SIZO to the colony without a court decision. The officials did not allow the attorney to meet with her client, and when she called the police, she was invited for a “conversation” with the governor





of the colony, who started to insult her. When the attorney began to record the governor's behaviour on her mobile phone, the latter snatched the phone from her hands, having inflicted injuries on her. Although criminal proceedings were instituted for causing light bodily injuries, the suspected perpetrators were not served with a notice of suspicion, and no criminal proceedings were instituted for committing violence against a defender and for violation of the right to defence.

On 9 February 2016 Mr Volodymyr Dmytrenko, "Self Defense" member, inflicted bodily injuries on the attorney Yevgeniya Tarasenko (Odessa), when she performed her professional duties. In order to collect evidence, the attorney began to make video-recording of the offense, and when she directed the camera to Mr Dmytrenko, he punched her in the face, as a result of which a tablet fell down and crashed, and the attorney received injuries. As a consequence, criminal proceedings were instituted under Article 398 CC ("threats of, or violence in respect of a defence counsel or representative of a person").

#### 4. Threats to attorneys made in connection with their professional activities

The law enforcement authorities "compensate" their lack of competence in criminal proceedings not only with the ability of using force against their opponents, but also with putting moral pressure and expressing threats both in respect of attorneys and their clients. Attorneys encounter such actions by law enforcement officers almost daily, the following being just a few examples.

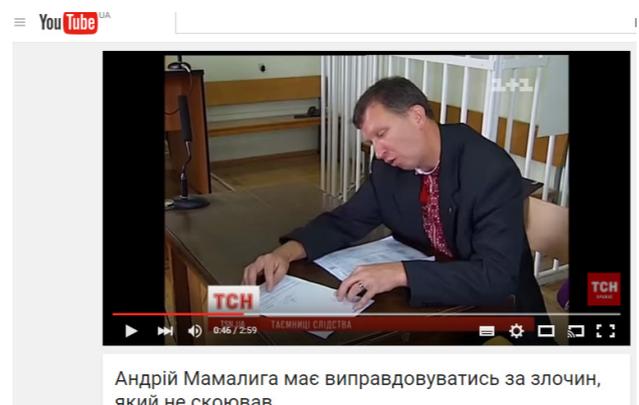
In March 2014 the attorney Mykola Biryukov received by phone threats of physical violence in connection with his professional activities. Those threats were made by Mr A.I. Bryukhovych, head of investigation department of the Prosecutor's Office of the Chernivtsi region. A proper examination of the circumstances and bringing of perpetrators to justice has never taken place.

In October 2015 Mr A. Prykhodko, prosecutor of the military prosecutor's office, made threats of physical violence to the attorney Oleksiy Shevchuk. This was associated with the attorney's participation as a defender in a high-profile criminal case. The prosecutor also carried out search operations in respect of the attorney, without complying with the Law of Ukraine "On the Bar and Practice of Law".

In February 2016 the officials and investigators from the prosecutor's office of the Dnipropetrovsk region conducted investigative actions against attorneys S.O. Vesnin, R.V. Kapran and N.S. Brattsev, threatened them and repeatedly summoned them for questioning as witnesses.

In February 2016 the attorney Ganna Boryak received prosecutor's threats and demands to withdraw from criminal proceedings. Later on, the NGO "Council of public safety", which acted in the interests of the prosecution, threatened Mrs Boryak with physical violence. The NGO representatives blocked the court to prevent her from attending the court hearings. After the threats, unknown persons broke the windows in her office. The attorney requested the authorities to provide her with security in accordance with the law, but her request has been rejected.

The judicial authorities cannot cope with the crowds of civil activists coming to public trials. This breaches the procedural order in those trials (especially in high-profile cases) and often makes the





conduct of court proceedings uncontrolled. The troublemakers' actions often present a threat to security of suspects/defendants, attorneys and judges.

In order to stop this practice, it is sufficient to properly organize the work of the court on access to court hearings not only by the participants but also by the journalists and the public, and the law enforcement agencies should duly react and take action. As this does not happen, there are reasons to believe that such inaction by the law enforcement authorities is due to the fact that they benefit from the work of courts and attorneys under constant pressure, which in turn breaches the right to a fair trial and destroys the confidence in the court an institution for the defence of human rights.

## 5. Destruction of attorneys' property

Cases of burning attorneys' cars, cutting tires, beating windows in attorneys' offices, shooting law offices or boards on law offices have also become more frequent. Law enforcement authorities do not conduct proper investigation and perpetrators are not identified. Here are just some examples of "reprisals" against attorneys.

In December 2013 a car belonging to the attorney I. Chudovsky was burned.

In July 2015 unknown persons burned a car of the attorney L. Kornilova.

In December 2015 unknown persons shot the advertisement board of the attorney V. Buryak.

In January 2016 unknown persons burned a car of the attorney O. Shadrin.

In February 2016 unknown persons burned a car of the attorney A. Fedur.

These facts require proper investigation and are unacceptable practice of pressure on attorneys. Attacks on attorneys, destruction of their property are not only a breach of guarantees of practice of law, but also a challenge to the Ukrainian judicial system in general, as this is essentially an attack against it.

For ensuring effective defence of human rights, attorneys should work in a society where not only the laws but also the practice guarantee the respect for the independence of the Bar, and those who attack it by way of unlawful influence, undue restrictions, pressures, threats or interference, intimidation or harassment must be brought to liability.

## 6. Searches of attorneys' offices with the aim of obtaining attorney-client privilege

Unfortunately, progressive changes in the legislation and recertification of law enforcement officers have not led to an automatic improvement of professional skills of investigators and operative officers in collecting admissible evidence in criminal proceedings. Some officials practice unlawful ways and try to obtain such evidence by robberies and armed attacks on attorneys' offices, which they call "searches" which were allegedly conducted with minor breaches of the procedure. In reality, under the guise of a search, they seize attorneys' documents in respect of all clients, laptops, phones and even money; offices are havocked to the extent that it is impossible to resume work for a long period of time.

For example, in June 2013 the office of the attorney V.V. Koshelya was illegally searched in breach of the attorney's professional rights and guarantees. During the search, the information which



Корстокий напад на адвоката під Києвом став другим з ючатку літа

5 Серпня 2015, 18:13 1222 Версія для друку Відправити другу

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- 26 Серпня 2015, 12:32 Під Києвом невідомий напад на адвоката з ножом
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«убозівці» нібито за участь у провокаціях під час заворушень біля Адміністрації Президента 1 грудня.

Його адвоката, Віктора Смалія, затримали начебто за погрози родичам судді, який веде справу Дзиндзі. Зокрема, за погрози в соцмережі Вконтакте дружині судді. Тим часом друзі Смалія пишуть на його сторінці у «Фейсбукці», що адвокат Віктор Смалій підозрюється в тому, що 06.12.2013р. після оголошення суддею Бугелем про обрання запобіжного заходу його підзахисному Дзинзі Андрію, нібито вхопив суддю за рукав мантиї, маючи намір заподіяти судді тілесні ушкодження.

10 грудня в оселі Віктора провели обшук. А 9 грудня адвоката затримали співробітники міліції і до вечора перевели в слідчий ізолятор. При цьому адвокат, якого пустили до Смалія, підтверджує наявність на його тілі синців і гематом, відбитка підшви черевика на лобі, гематоми на голові.

Журналістів і громадськість на суд не пустили. Сил відбілювача в закритому



was stored on electronic media and represented attorney-client privilege was seized. Breaches during the search led to a disclosure of attorney-client privilege in respect of all clients of the attorney, which is a flagrant violation of the law. Neither the investigators, nor the prosecutors saw in those actions any violation of the law and the complaints of the attorney and the UNBA to the managers of law enforcement authorities have remained unanswered.

In July 2013 a search was conducted in the office of the attorney Valeriy Blagovidov. The search was based on a ruling of the investigating judge delivered at the request of the investigator. The search resulted in a violation of paragraph 3 of part 1 of Article 23 of the Law of Ukraine "On the Bar and Practice of Law".

In September 2013 the employees of the investigation department of the tax police in the Shevchenkivskyi district of Kyiv led by Mr S.P. Boychenko, senior investigator of the same department, unlawfully conducted a search and seized property in the law offices "Lira". Despite the court order to return the seized property, the investigator has never done this.

The same month, senior investigator E.G. Smirnova, investigator A.A. Gordienko, acting investigator D.M. Kozlov and senior investigator A.L. Kovalchuk violated the requirements of the legislation of Ukraine during the search of the premises of the law firm "Alekseev, Boyarchukov and partners". The Kyiv City Bar Council was untimely notified of the search, namely, eight minutes before its start. As a result of the search, documents containing attorney-client privilege were seized, despite the fact that they were not mentioned in the court ruling. Following the UNBA inquiry to the PGO, the former received a response that no breaches of the CCP were committed during the search.

In October 2013 the investigating judge of Novozavodskyy District Court of Chernigiv allowed a temporary access to documents and the possibility of their seizure from the law office "Law Company Capital". The court's ruling did not specify a list of items and documents to be seized, the court having ignored the attorney-client privilege guaranteed by law and the right of other clients of attorneys, who had no relation to those criminal proceedings.

The same month, a group of investigators from Kharkiv and senior investigator M.I. Chervyakov breached the law during a conduct of search in a living premise of an attorney; in particular, a regional bar council was not informed thereof. The officers seized documents not mentioned in the court ruling and documents containing attorney-client privilege.

In November 2013 the officials of the prosecutor's office in Kyiv, investigator O.B. Protas and the officials of the State Security Service conducted a search in the law offices of the attorney G.M. Kolesnyk "The sword of Themis" with a gross breach of the law. The search rather resembled a robbery. Neither the attorney Kolesnyk, nor the representatives of the law office or the Bar Council of the Kyiv region were informed of the search. The above officials seized without protocol documents concerning the attorney's professional activities and containing attorney-client privilege, as well as laptops, memory sticks and money. During the search windows, doors and furniture were broken. The court ruling did not specify what exactly had to be the object of the search and the reasons for its conduct in the law offices, nor did it contain a list of documents subject to seizure.

### уд вирішив не брати під варту адвоката російського пецпризначенця



Оксана Соколовська

**КИЇВ, 29 лютого.** УНН. Шевченківський районний суд Києва відмовив прокуратурі у задоволенні клопотання про обрання запобіжного заходу у вигляді тримання під вартою для адвоката російського спецпризначенця Євгена Єрофєєва Оксани Соколовської. Таке рішення оголосив слідчий суддя Володимир Бугіль, передає кореспондент УНН.

Слідчий суддя не задовольнив клопотання прокуратури і не застосував до О.Соколовської жодного запобіжного заходу.

На думку судді, викликає сумнів факт вручення О.Соколовській повідомлення про підозру належним процесуальним чином.

**ЧИТАЙТЕ ТАКОЖ:** [У прокуратурі Київщини підтвердили проведення обшуку у помешканні адвоката Є.Єрофєєва](#)

Нагадаємо, раніше О.Соколовська повідомила на своїй сторінці у Facebook, що їй намагалися вручити повідомлення про підозру у скоєнні злочину передбаченого ч.1 ст.121 ККУ (завдання тяжких тілесних ушкоджень -

## Корбана без адвокатів привезли до суду. Обирають запобіжний захід. Наживо



Адвокати Геннадія Корбана - Андрій Богдан та Оксана Томчук - прибули на допит до Прокуратури міста Києва.





Also in November 2013 the officials from the Kyiv department for combating organized crime, including police colonel S. Zhytnyk and investigator E.V. Bogolyub, conducted a search in breach of the law in the workplace of attorneys O.V. Zinchenko, T.V. Kostin, O.M. Lysak and S.V. Maksymenko. The attorneys and representatives of the Bar Council of the Kyiv region were not allowed to participate in the search. Documents containing attorney-client privilege were seized from the office. The attorneys were not given a document on the basis of which the search was conducted.

Again in November 2013 Mr S.M. Panteleyev, an investigator from Odessa, in violation of the Law (Article 23) requested the court to allow him to search attorney's residence. During the search documents related to the attorney's activities and containing attorney-client privilege were seized.

In July 2014 representatives of the Main Investigation Department of the Ministry of Interior conducted unlawful search of a car belonging to attorney A.Y. Karagovnyk. Also, the attorney was invited to the Central Investigation Department of the Ministry of Interior as a witness for the purpose of disclosing the attorney-client privilege.

In September 2014 the officers of the State Security Service in the Kherson region conducted unlawful search and seized documents containing attorney-client privilege in the office of the attorney V.V. Zakharchenko. Also, the attorney was questioned as a witness for the purpose of disclosing the attorney-client privilege.

In November 2015 the acting prosecutor of Kyiv authorized a search of the premises of the attorney V.V. Larichev. In January 2016 Mrs A.P. Pomitalkina, investigator of the Main Department of the Ministry of Interior in Kyiv, searched the attorney's premise on the basis of the ruling of the Shevchenkivsky District Court of Kyiv, even though that premise was not specified as an object of the search. As the result, the attorney-client privilege was disclosed.

## 7. Covert surveillance of attorneys

How else is it possible to obtain information from an attorney (disclose attorney-client privilege), apart from the search? Usually, by way of a covert surveillance of an attorney, tapping his or her telephone conversations with a client and surveying his or her correspondence. The state does not ensure guarantees of protection of attorney-client privilege, which negates the provision of legal assistance. Attorneys very often notice the outside interference with their communication with clients and with their correspondence. Law enforcement authorities most often do this with the breach of law, and provide no justification for and authorization by the court of such measures.

In September 2013 Mr O.P. Chalyy, detective in particularly important cases of the Department for Combating Organized Crimes in Kyiv, threatened the defence counsel Yuliya Shestakova with seizure of documents without the court's or prosecutor's authorization. He also requested the Desnyansky District Court of Kyiv to grant permission for a covert surveillance of the attorney. In his request, the detective intentionally did not inform that the person in respect of whom covert surveillance would take place was an attorney.

In December 2015 representatives of the State Security Service in Kyiv illegally conducted a covert surveillance in respect of the attorney O.O. Goroshynsky and, in breach of law, obtained access to attorney-client privilege.

No one has been held liable for the above breaches.



Корстокий напад на адвоката під Києвом став другим з ючатку літа [детальніше](#)

5 Серпня 2015, 18:13 1222 Версія для друку Відправити другу

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Іліція шукає нападника. Автор фото: Григорій Салай, "Сьогодні"

Комітет захисту прав адвокатів

- Територіальний адміністративний Комітет
- Надзвичайні вчинки адвокатів
- Процедури кваліфікації адвокатів
- Подати та бухгалтерський облік адвокатів
- Ордер адвокатів
- Оплата внесків
- Актуальні питання
- Дошка пошани
- Стажувальники
- Пошук адвоката
- Відео
- Запис на семінар

**Подробилці нападу на бориспільського адвоката Олександра Вишневого (відео)**

Миттєва реакція представників Комітету захисту прав адвокатів Ради адвокатів Київської області на події, які сталися з адвокатом О. Вишневим 10 липня 2015 року, дозволила з'ясувати додаткові подробиці нападу на адвоката.

На фото: адвокати Ганна Колесник та Любов Крутнова під час з'ясування обставин на місці події

Таким чином, після опитування свідків та батька потерпілого, вдалося відтворити обставини події. Зокрема, напад стався у Борисполі, на вулиці Київській Шлях 43, біля офісу адвоката Олександра Вишневого вийшов зі свого



## 8. Questioning of attorneys

Yet another “safe” way to disclose attorney-client privilege is to question an attorney.

In September 2013 Mr S.V. Bugayenko, the PGO senior investigator of particularly important cases, summoned an attorney for questioning him as a witness in a case, in which the latter acted as a defender. The investigator interfered with the attorney’s professional activities, wishing to obtain information that became known to the attorney in the course of the criminal proceedings. The UNBA made an inquiry to the PGO and received an answer that the investigator’s actions entailed no breaches of the CCP and no interference with the attorney’s professional activities, such as putting obstacles on the attorney’s professional activities.

In November 2013 Mr D.M. Syshchenko, head of investigation department of the Simferopol police department, tried to question the attorney A.V. Vyetrov in the context of criminal proceedings, without following appropriate procedures and in breach of Article 23 of the Law. The UNBA made an inquiry to the PGO and received a reply to the effect that, having summoned the attorney for questioning, the investigator had not breached Article 23 of the Law, the allegations about the interference by officials with the attorney’s professional activity having not been confirmed.

In September 2014 Major A.M. Gubskyy, senior detective from the Dzerzhynskyy District Police in the Kharkiv region, arranged the interception by law enforcement authorities of private communication of the attorney Evgen Riyako with his client and made declassification of a protocol on interception of communications. The prosecutor’s office in Kharkiv informed that covert investigative (detective) actions related to interference with the privacy of communication of the suspect A.B. Litvinyuk, which had been carried out on the basis of, and pursuant to the ruling of an investigating judge of the Kharkiv Regional Court of Appeal of 15 May 2014 permitting to carry out the above actions. Thus, in the prosecutor’s opinion, the authorization was obtained in accordance with the law, and actually the interception took place in respect of the telephone conversations of the client with the attorney, rather than of those of the attorney with the client; therefore, there had been no violation.

In November 2014 Mr P.O. Levyk, senior investigator of the Main Investigation Department of the State Security Service, summoned the attorney M.V. Kolosyuk for questioning him as a witness in criminal proceedings, in which the said attorney was a defender under a contract of legal assistance.

In December 2015 Mr A. Glushko, the PGO investigator, summoned the attorney M.Y. Buryakova for questioning her as a witness in criminal proceedings.

In January 2016 Mr O. Nedilko, investigator from the Kyiv city prosecutor’s office, summoned attorneys for questioning them as witnesses in criminal proceedings concerning G.A. Korban, a Ukrainian politician.

In February 2016 Mr R.M. Grygoryshyn, the PGO senior investigator, questioned the attorney Sergiy Vilkov as a witness in order to put pressure on him and to obtain information protected by attorney-client privilege.





## 9. Breach of attorney-client privilege due to the adoption of certain legislative acts

In October 2014 the Law of Ukraine “On the Bar and Practice of Law” was supplemented by some provisions to the effect that the submission by an attorney, in the manner prescribed and in cases provided for by the Law of Ukraine “On prevention of, and counteraction to legalization (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction”, of information to central executive body implementing the state policy in the sphere of combating legalization (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction, is not a breach of an attorney-client privilege.

The Law “On prevention of, and counteraction to legalization (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction” obliges an attorney to submit information about criminal activities of financing terrorism in respect of his or her client, i.e. attorney-client privilege. But it should be remembered that a client addressed his or her attorney for defence, or an attorney was appointed by the state to a person suspected of a crime in connection with the financing of terrorism or legalization of income. So does the state ensure defence of such a person, if the attorney, instead of defending him or her, “leaks” information about his or her client in accordance with the law?

This law also obliges an attorney to submit information about his or her suspicions regarding the activities of individuals or their assets, if there are reasons to believe that they are connected with the offense established on the day of emergence of suspicion or reasonable grounds for the suspicion.

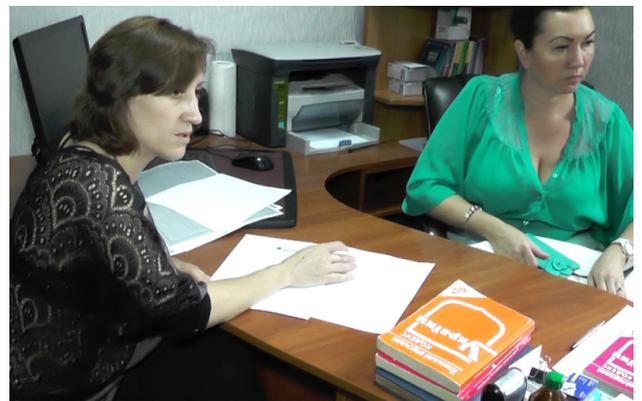
Attorney’s failure to comply with the above requirements entails criminal liability. An attorney, who provides legal assistance in criminal proceedings, may learn something about the activities of his or her client. However, is it ethical to comply with the requirements of the law in such cases? It is known that this situation exists not only in Ukraine and the legislation of the European states contains similar provisions. Yet, the professional community emphasizes on the existence of the apparent problem.

## 10. Disclosure of attorney-client privilege by other means

In addition to the aforementioned methods of disclosing attorney-client privilege, there are many other egregious facts of breaches of this professional guarantee.

Very frequently, during the visits by attorneys of detention facilities and colonies their employees not only search attorney’s personal belongings, but also “check”, which particular documents the attorney carries with him or her, and whether they are related to the criminal proceedings. This is the way how attorney-client privilege is breached.

A “cage”, in which a detainee is kept during his or her meeting with the attorney in the investigator’s office in the SIZO, is located on quite a large distance from the attorney’s table, in order to make him or her speak loudly, so that it would become possible to hear what is being said. Doors, which are not closed tightly in the investigators’ offices, also make it possible to listen to a conversation between an attorney and a client. During the repairs, large viewing windows are installed, so that it becomes possible to observe the attorney’s work. Finally, listening devices are installed in the offices, in which attorneys provide legal assistance to clients.





A breach of attorney-client privilege also takes place on the part of a convoy, when an attorney passes documents to a client: a convoy tries to “find out” what is written in those documents.

A breach of attorney-client privilege is also committed by secondary legal aid centres, when they demand attorneys to submit reporting documents to persons who are not attorneys.

Public organizations, of which attorneys are members, interfere with attorneys’ activities demanding them to explain their position and to provide documents representing attorney-client privilege and appropriating the QDCB function.

## 11. Interference with attorney’s legal position

There has been an increase in number of cases where law enforcement officers, in order to influence on the position of legal counsel, send complaints against them to a QDCB and request it to discipline them. The same practice is even more frequent among judges. They often make threats that there will be a relevant complaint, even though the only reason for such threats is the fact that the attorney does not agree with the position of the prosecutor or the court. Here are just a few examples.

In 2014 judges of the Shevchenkivskyy District Court of Kyiv lodged a complaint with the QDCB of the Kyiv region against the attorney G.M. Kolesnyk due to the fact that, having taken a categorical position of disagreement with the prosecution, she allegedly caused damage to the client by such actions. The QDCB rejected the complaint. Subsequently, the court acquitted the attorney’s client.

In December 2015 Mr S. Ovcharenko, deputy prosecutor of the Cherkasy region, put pressure on an attorney by sending complaints to the QDCB.

In February 2016 Mr R.O. Gulyaev put pressure on the attorney I. Abdullayeva-Martirosyan and interfered with her activities by submitting groundless complaints to a QDCB and the HQDCB.

Officials of the Council of National Security and Defence put pressure on the attorney K.K. Doroshenko by not giving answers to her letters of inquiry and constantly sending complaints against her to a QDCB.

## 12. Attorneys are not equal with prosecutors in their procedural rights

According to the law, an attorney is guaranteed equal rights with other participants of the proceedings and respect for the principles of adversarial proceedings, equality of arms and freedom in providing evidence and proving their credibility. However, these principles are only declaratory and are violated not only in practice, but also on the level of regulations including the legislative acts.

Thus, under Article 21 of the Law of Ukraine “On pre-trial detention”, the administration of a pre-trial detention facility is required to create necessary conditions for the proceedings-related work of the investigator, prosecutor, investigating judge and the court.

However, similar conditions are not created for the attorneys providing defence and legal assistance to prisoners. Attorneys are

### Палачи адвоката с Киевщины ждут приговора



Убийство из-за профессиональной деятельности Правозащитника Юрия Игнатенко, изуродованное тело которого на днях нашли на Киевщине, до смерти заблуждало четыре человека. Среди них был недовольный киевлянин, который решил таким образом отомстить адвокату.

Четверо подозреваемых - в СИЗО, их машина - на штрафплощадке. Чтобы найти убийцу адвоката Юрия Игнатенко, правоохранителям понадобилась неделя. Коллеги погибшего утверждали - его замучили за профессиональную деятельность. В последнее время юрист защищал права пенсионеры, у которой сын хотел мошенническим путем отобрать жилье. Но адвокат вернул право собственности клиентке. Поэтому милиция начала искать убийцу именно среди недовольных после приговора суда. Версия подтвердилась.





forced to work in conditions which could amount to inhuman treatment: long waiting of a client, which takes place outside the institution in any kind of weather conditions (rain, frost, heat, etc.), lack of heating in rooms, prohibition to bring water, prohibition to carry documents in batches, which creates inconvenience and impossibility to bring up copies of case materials, materials of attorney's dossier (which may include several dozen volumes), terrible unsanitary conditions, absence of functioning toilets which can be used by attorneys, rude personnel, etc.

When prosecutors and investigators enter the court buildings, they show their IDs, while attorneys have to wait in a queue for registration. Such an attitude towards attorneys already at the threshold of a court demonstrates discrimination against them as participants of the proceedings. Unequal treatment of participants and disrespect to defenders is shown also in the courtrooms, which often have no tables for defenders, but there is always a table for prosecutors (e.g. Svyatoshynskyy District Court of Kyiv), or the tables are very different: a prosecutor has a new and nice big table and a defender is given an old table, which has remained in the court since the Soviet times.

The courts do not comply with the regulatory requirements, which provide for the presence of a room for attorneys. Courts very often open rooms for legal aid attorneys, which puts other participants in unequal conditions.

Very often, attorneys are not notified or are untimely notified of the court hearings. Such violations lead to a breach of reasonable time of examination of cases, adoption of court decisions without a participation of a defender when such participation is mandatory and a violation of the right to defence.

Judges accept all materials submitted by prosecutors and include them in the case file, summon all requested witnesses. However, submission of evidence by a defender or summoning of witnesses requested by a defender are put on discussion, which demonstrates the diminishment by the court of the defender's role and giving improper preference to the prosecutor during the trial. The same happens with forensic examinations: if they were ordered by the investigator, the court accepts them; but if the examination was commissioned by the defender, the court puts the acceptance or rejection of such examination on discussion.

The Code of Criminal Procedure does not envisage providing an injured party with an indictment, which effectively leads to a violation of the rights of an injured party to support the indictment or to object to it. Certainly, the injured party or his attorney have the right to get acquainted with the case materials in the court, but this happens after the preparatory hearing, on which the injured party does not have equal rights with other participants of the proceedings.

Attorney as a defender has unequal rights during the pre-trial investigation as well. Attorneys are not given case materials for getting acquainted with them. Very often, it is simply "impossible to find" where they are – at the disposal of a group of investigators, prosecutors or somewhere else; the procedure for getting acquainted with the case materials is not regulated; an attorney cannot "catch" a prosecutor or investigator at their workplaces, and to get acquainted with the case materials; an attorney may need to "catch" them for several days. Very often investigators refuse to accept procedural motions and send attorneys to the police registry, thereby delaying the time of their consideration, since they arrive to the investigator from the registry only in a few days. Attorneys' demands, complaints and statements are very often examined under the provisions of the Law "On citizen's appeals". When opening case materials, the

## Бориспільського адвоката вбили за професійну діяльність



И

### ЗІ ЗАСТРЕПИЛИ АДВОКАТА

ия 2015 | СУСПІЛЬСТВО

Рекомендувати 0 В +1 Твіт Г+1



#### Напередодні ввечері в Харкові застрелили адвоката Олександра Грузкова.

Тіло чоловіка знайшли поблизу його будинку.

За попередньою інформацією, у чоловіка зловмисники поцілилися на найменше тричі.

Правоохоронці вже відкрили провадження за фактом навали вбивства. Чи пов'язано воно із терактом біля суду - поки що

Як повідомлялося, у понеділок ввечері поблизу Московського районного суду прогрімів вибух, внаслідок якого постраждали люди. Восьмеро досі залишаються в лікарні, двоє з них у

гаряча тема Протистояння на сході України Спецзубрика Інфографіка: економіка в цифрах

Головна > Новини Києва > Незвичайні випадки Києва

### Міліція затримала підозрюваних у викраденні і вбивстві бориспільського адвоката

26 Березня 2015, 18:40 3106 1 Версія для друку Вправити друку



#### СТАТТІ НА ТЕМУ:

26 Березня 2015, 07:26

Під Києвом бандити викрали і вбили адвоката

26 Березня 2015, 17:05

Під час стрілянини в центрі Києва постраждали двоє чоловіків - офіційна інформація

26 Березня 2015, 16:42

У Києві на Оболоні затримали чоловіка з автоматом

TCH Україна Політика Економіка Відео Випуски TCH Блоги Спорт Авто Леді Цікавинки Всі розділи

Загострення у зоні АТО Двоє вбитих у Києві

### В БОРИСПОЛІ ВИКРАЛИ АДВОКАТА ЮРІЯ ІГНАТЕНКО

TCH 19.03.2015 26 березня, 2015, 19:08

1 В 0 Твіт 0

ДО ОБРАНЬОГО ☆



prosecutor does not give participants to the proceedings an access to material evidence. There are also cases where prosecutors refused to accept materials which attorneys opened to the parties.

Prosecutors very often allow themselves to enter the judges' offices and the judges condone this, contrary to the requirements of the Code of Judicial Ethics, which in order ensure the impartiality of a judge forbids them to communicate with one party to the proceedings in the absence of the other.

### 13. Failure to provide responses to attorneys' letters of inquiry

Failure to provide response to attorneys' letters of inquiry is not only a breach of attorneys' professional guarantees, but also a form of manifestation of unequal position of the attorney in the proceedings, violation of the right to defence, and the indicator of formation of features of a police state, rather than the state governed by the rule of law. Attorney's letter of inquiry is a form of obtaining evidence. Investigators and prosecutors are not limited in this regard. Attorneys are very often deprived of the opportunity to collect evidence as answers to their inquiries are not given or just come-offs not containing necessary information are given.

Failure to provide answers to attorney's letters of inquiry occurs very often. Courts totally ignore this rule and view attorney's letters of inquiry as requests of the parties to the proceedings or as citizens' appeals.

### 14. Breach of the right to defence

Despite the legislative guarantees of the right to defence, officials often breach them or make the appearance that such a defence was provided, i.e. make imitation of defence.

Detectives or investigators do not explain detained persons the right to choose an attorney. They do not provide them with the possibility to invite an attorney of their own choosing, and not that appointed by the state. They do not make it possible to contact an attorney and to invite him or her in order to receive legal assistance. There are cases where a state-appointed attorney provides legal aid, and an attorney who came to provide assistance under the contract with the client or his family is not allowed to visit a detainee.

Sometimes centres of secondary legal aid are not notified, or notified with delay, of detention of a person. For example, in October 2013 Mr R.O. Sypko, investigator of the Kyivskyy district police of Poltava, did not inform the legal aid centre, having seriously breached a person's rights to defence. The same investigator, in order to intimidate and put pressure on the attorney V. Buglak for her legal position as a defender, opened criminal proceedings against her. Having done so, the investigator ignored the requirements of Article 23 of the Law.

Attorneys arriving to provide defence to a detained person are often not given case materials for getting acquainted with them or they are not given the opportunity to get prepared for a procedural action. Often during investigative and procedural actions with clients attorneys are not given the opportunity to communicate with clients in confidential conditions, and even if they are given such opportunity, this may be a toilet, corridor, staircase, etc.

Investigators intimidate and persuade detainees to waive defence. This has recently happened to the attorney A. Mamalyga, who



**МЕДІА ГРУПА БЪЕКТИВ**

**Поліція просит помощи в розыске подозреваемого в убийстве харьковского адво**

Как сообщалось, ЧП произошло около 19:30 19 января этого года на улице Чичибабина, Тогда было обнаружено тело убитого 52-летнего адвоката Александра Грузкова



погибшего обнаружили семь огнестрельных ранений. ЧП квалифицировали как умышленное убийство.

зрению в совершении преступления ГУ МВД Украины в Харьковской области разыскивает неизвестного мужчину - на вид около 185 см, худощавого телосложения. Он был одет в темную одежду, в руках держал игрушечного медведя.

то обладает какой-либо информацией о разыскиваемом, или стал свидетелем ЧП, просит обратиться в милицию.

015 р. 11:30  
Шапалова



версия для



signed a legal assistance contract with a prisoner's relative, but the latter, following the investigator's "persuasion", submitted a statement that he was afraid to stay alone with his attorney. As a consequence, the attorney had to exert much effort to hold a confidential conversation with the client.

Attorneys are not allowed to meet with their clients. For example, in April 2015 Mr G.V. Lysenko, senior investigator of the Dniprovskyy District Police in Kyiv, did not allow the attorney Vyacheslav Peskov to meet with his client during the investigation.

The same month Mr O.Y. Radkevych, investigator of the Main Investigation Directorate of the Ministry of Interior, did not allow the attorney R.V. Mititel to participate in the search of his client.

Also in April 2015 the law enforcement officials put obstacles to attorney Iryna Ivanova, who provided legal assistance to her client.

In February 2016 Mr S.O. Danich, investigator of the State Fiscal Service of Ukraine, did not allow the attorney L. Dubchak to participate in a search of, and to provide legal assistance to his client.

Attorneys are quite often prevented from visiting their clients in detention centres. There are also cases of concealing clients from their attorneys, failure to provide information on where the clients are held, etc. For example, in November 2013 the officials of the Mena penal colony no. 91 repeatedly prevented the attorney N.V. Blokhin from carrying out his professional activities and, in particular, from communicating and meeting with his client.

There are cases of non-admission of an attorney to a client on the grounds that the agreement was signed by the client's relatives, rather than by the client himself (who is held in custody).

Many courts have replaced the metal "cages", in which the prisoners are held, with the plastic ones, but very often these constructions are soundproof, making it impossible for an attorney to communicate with his or her client.

Besides, the courts do not ensure confidentiality of attorney's meeting with a client: even if the courts allow the attorneys' requests about the need for a confidential communication, it takes place in the presence of a convoy officer who refuses to step even three meters away. This issue gets particularly acute when an attorney is appointed for a single procedural action, and he or she does not know the circumstances of the proceedings or client's position. In fact, the appointment of an attorney for a single procedural action is merely a "declarative" defence, because the attorney is deprived of an opportunity to get acquainted with the case materials and to get prepared for the procedural action.

There are even more stringent forms of unequal procedural opportunities of attorneys in the proceedings, for example, by way of prohibition to collect evidence, which is manifested in the institution of criminal proceedings against attorneys who questioned under the CCP the victims and witnesses of the prosecution – those actions were regarded by the prosecutors as putting pressure or threats.

## 15. Identification of attorneys with clients

Taking into account the political situation in our country, attorneys have to defend persons responsible for the dispersal of Maidan, persons recognized by the previous government, lustrated persons, terrorists and separatists, members of the parliament and people suffering from social condemnation.

Identification of attorneys with their clients is made not only by plain citizens and the media; even the investigators, prosecutors and judges disrespectfully treat the attorneys engaged in the defence of these persons. Attorneys emphasize that the law prohibits identification of an attorney with a client. It also states that judges must respect attorneys' rights, treat their clients with tolerance and not allow violations of human rights and fundamental freedoms.

## 16. Right to a fair trial

The enjoyment by everyone of the right to a fair trial envisages the existence of the independent judiciary and the legal profession independent from the state and the risk of criminal prosecution. In the context of the principle of independence of the Bar and provision of high-quality legal assistance to everyone, the issue of reformatting the legal aid system, which should not be subjected to the state intervention, is getting especially acute. The bar self-government bodies set the quality criteria for legal aid and they are able to regulate their profession on their own.

Undoubtedly, the creation of a mechanism of provision of legal aid to persons in the first hours of detention is a revolutionary step against the background of what had remained from the Soviet Union. But in comparison with other countries, this mechanism needs to be improved, primarily due to violation of human rights and guarantees of legal profession.

When the Bar becomes stronger, the law enforcement authorities are trying to forcefully influence on attorneys, and the Ministry of Justice, which administers the system of legal aid, puts attorneys in a financial dependence - the unequal distribution of cases, giving assignments to individual attorneys in high-profile cases, which will then be a good "publicity move" for them, selective distribution of better-paid cases to "favourite" attorneys, failure to include in the payment of attorney's work those types of legal aid which is not beneficial for the state: visits to detention centres, collection of evidence, defence of clients from torture and falsified criminal cases (submission of crime reports, representation of a client as an injured party, etc.), because the attorney may only refute the evidence. As a consequence, those guilty of human rights violations are not brought to justice.





## CONCLUSIONS

Breaches of attorneys' rights in Ukraine in the period between mid-2013 and early 2016 have reached a critical and threatening point, which demonstrates the absence of the rule of law in Ukraine. The risks of, and the threats to attorneys due to their professional activities are becoming more common. One can say that today legal profession in Ukraine is a profession dangerous for life.

Breaches of attorneys' rights directly lead to breaches of human rights, as the citizens become essentially unprotected from the state.

It appears that the main reason and source of violations of attorneys' professional rights is the law enforcement system of the state, which characterizes Ukraine as having the features of a police state.

The Prosecutor-General's Office of Ukraine does not take any measures to bring perpetrators to liability, thereby creating the basis and incentives for such violations.

Those guilty of violations of attorneys' professional rights and guarantees must inevitably be held liable.

Ukraine needs an urgent radical reform of the law enforcement system and the prosecution office.



## ATTACHMENTS