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Thursday, 14 July 2016

Thorbjørn Jagland

Secretary General of the Council of Europe
Private Office
Avenue de l'Europe
F-67075 Strasbourg Cedex,
France

Your excellency,

Ukrainian National Bar Association (UNBA) presents its compliments to the Council of Europe and has the honor to address the situation concerning violations of advocates' professional rights and guarantees of practice of law in Ukraine.

Ukrainian National Bar Association is a non-governmental self-governed non-profit professional organization established in 2012 on the basis of the Law of Ukraine "On the Bar and Practice of Law". Every advocate who has a right to practice law in Ukraine is a member of our organization. According to the Law, UNBA acts as the regulator and representative of the profession.

Since 2013, the number of violations of advocates' right in Ukraine has been constantly rising. UNBA has prepared a special report on this subject, please see it attached. The alarming increase in the number of violation has been a topic that our international partners, namely the Council of Bars and Law Societies of Europe (CCBE) and International Bar Association (IBA) have addressed in their intervention letters to President of Ukraine, Prime-Minister of Ukraine, Director of National Anti-corruption Agency of Ukraine, Minister of Internal Affairs, Prosecutor General of Ukraine and others. Please see the letters attached for your reference.

The reaction of Ukrainian authorities was somewhat puzzling, as they all redirected these letters down to the agencies implicated as the ones violating the professional rights and guarantees of advocates. Sadly, just as other official authorities, the NABU did not refer to any specific cases and limited its

feedback to the overview of the competencies of the controlling bodies as enshrined in the Ukrainian legislation. At times, official authorities do not even bother compiling a different text for responding to various enquirers.

Violations of advocates' professional rights and guarantees in Ukraine reached a whole new level when National Anticorruption Bureau of Ukraine (NABU) became yet another state agency launching a series of investigations jeopardizing the very foundations of due process and rule of law in Ukraine.

On 5 July 2016 detectives of Main Detective Division of National Anticorruption Bureau of Ukraine, together with prosecutors of Specialized Anti-Corruption Prosecutor's Office conducted multiple searches of advocates' offices. Judge-investigator of Solomyansky District Court of Kyiv O. Bobrovnyk sanctioned the searches.

They violated the following provisions of Ukrainian legislation:

Judge-investigator:

1. referred in his court order to art.23 of the Law of Ukraine 'On the Bar and Practice of Law' solely in connection with notifying regional bar council about search. It does not refer to the statutory prohibition of examination, disclosure, demand or seizure of the documents in connection with advocate's professional activity, as provided by ss.4 of s.1 art.23 of the Law of Ukraine 'On the Bar and Practice of Law'.
2. in his court order failed to refer to art.480 of Criminal Procedure Code of Ukraine which requires law enforcement to account peculiarities of certain investigative procedures and measures in regard to an advocate. Art. 480 contain a list of persons (advocate included), that enjoy peculiar procedure of criminal investigation against them.
3. Identified advocate as his client, which is prohibited by ss.16 of s.1. art. 23 of the Law of Ukraine 'On the Bar and Practice of Law'. The court order issued by judge-investigator clearly states that advocate Andriy Tsygankov uses his advocate status to provide 'legal cover' for transit and cash-converting group among fictitious companies under control of a crime ring. Thus, professional activity of an advocate under the Law of Ukraine 'On the Bar and Practice of Law' is recognized as 'legal cover' for a crime ring, and that unequivocally amounts to identification of advocate as his client.

Detectives of National Anti-corruption Bureau of Ukraine together with prosecutors of Specialized Anti-Corruption Prosecution:

1. interfered and impeded advocate's professional activity, which is prohibited under ss.1 of s.1of art.23of the Law of Ukraine 'On the Bar and Practice of Law'. At the time of search, NABU detectives directly interfered and impeded advocate Tsygankov and other advocates to conduct their professional activity. Those facts are the basis for bringing the perpetrators to justice for the crime under art. 397 of Criminal Code of Ukraine.
2. identified advocate as his client, which is prohibited by ss.16 of s.1. art. 23 of the Law of Ukraine 'On the Bar and Practice of Law'. In his motion, Nazar Kholodnytsky, Specialized

Anti-Corruption Prosecutor, Deputy of Prosecutor General of Ukraine, clearly states that advocate Andriy Tsygankov uses his advocate status to provide 'legal cover' for transit and cash-converting group among fictitious companies under control of a crime ring. Thus, professional activity of an advocate under the Law of Ukraine 'On the Bar and Practice of Law' is recognized by pre-trial investigator as 'legal cover' for a crime ring, and that amounts to identification of advocate as his client.

3. conducted covert investigative acts of wiretapping the advocate's office, which amounts to interfering with private conversations between client and his advocate. This is prohibited under ss.9 s. 1 of art. 23 of the Law of Ukraine 'On the Bar and Practice of Law'. After NABU detectives searched the advocate's office premises, a covert listening device has been found thereon.

4. have reviewed or seized documentation in connection with professional activity of an advocate, they violated ss.4 of s.1 art.23 of the Law of Ukraine 'On the Bar and Practice of Law'. During searches of advocates' offices, NABU detectives illegally access advocates' dossiers, that contained privileged information.

UNBA has addressed these issues with an immediate press-conference on 6 July 2016, followed by letters addressed to the President of Ukraine, Prosecutor General and members of parliament. Prosecutor General of Ukraine in his statement supported the position of the UNBA on this matter and stated that there should not be any violations of this sort in a democratic society. A group of members of parliament, citing our statement, have initiated a parliamentary commission which is supposed to look into the matter.

Another alarming issue is that the Director of NABU Artem Sytnyk announced further searches of advocates. His statements were unclear as to the procedural status of the advocates in question. Therefore, we expect that further violations of advocates' professional rights and guarantees will take place, which is utterly unacceptable practice for any civilized nation.

UNBA would like to underline that advocates 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 recognized at both European and international level, such as UN Basic Principles of the Role of Lawyers, as well as by abundant jurisprudence of the European Court of Human Rights.

Furthermore, we wish to emphasize that advocates, when providing legal advice or representing clients, are bound by core professional values which include, in particular, the independence of the advocate and the right and duty of the advocate to keep clients' matters confidential. These core values are not only fundamental to the advocate-client relationship and the mutual trust between advocate 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.

Therefore, we kindly ask the Council of Europe to intervene in the situation of violations of advocates' rights in order to help protect fundamental principles of practice of law in Ukraine as well as uphold the rule of law.

Ukrainian National Bar Association avails itself of this opportunity to renew to the Council of Europe the assurances of its highest consideration.

Lidiya Izovitova

President

Ukrainian National Bar Association

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