

Submission to the United Nations

Universal Periodic Review

Individual UPR submission

Ukraine

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Human Rights Council

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Presented by:

Lawyers for Lawyers Foundation
An NGO in special consultative status with ECOSOC, United
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LAWYERS FOR LAWYERS UPR SUBMISSION – UKRAINE – MARCH 2017

A. Introduction

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially those regarding the legal profession, in Ukraine, with recommendations to the OHCHR for the 28th session of the UPR Working Group in the UN Human Rights Council in October/November 2017.
2. L4L is an independent and non-political Netherlands foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession around the world and has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights L4L's key concerns regarding Ukraine's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the UN Basic Principles on the Role of Lawyers¹ ('Basic Principles'), focusing on two main themes: (i) no effective guarantees for the functioning of lawyers, and (ii) no effective access to legal assistance. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.

4. Recommendations to the government:

Regarding (i) no effective guarantees for the functioning of lawyers:

- (a) to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**
- (b) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (c) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;**
- (d) to take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles;**

¹ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Regarding (ii) no effective access to legal assistance

(e) That the Ukraine government continues to implement in legislation as well as in practice recommendations 97.92, 97.95, 97.96, 97.98 and 97.109 of the UPR cycle in 2012 to ensure the proper functioning of the judicial system and the right to a fair trial.

C. Normative and institutional framework of the State

5. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights to which Ukraine is a party.
6. In its task of promoting and ensuring the proper role of lawyers, the Ukraine government should respect and take into account the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.
7. During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”.²
8. During the interactive dialogue in the UPR cycle of 2012 several recommendations with respect to the proper functioning of the judicial system and a fair trial were accepted by Ukraine³, including recommendations 97.92⁴, 97.95⁵, 97.96⁶, 97.98⁷ and

² UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11

³ Report of the Working Group on the Universal Periodic Review Ukraine, 20 December 2012, A/HRC/22/7 and Report of the Working Group on the Universal Periodic Review Ukraine, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/22/7/Add.1.

⁴ Recommendation 97.92: Provide the legal and operational framework for an independent and effective judiciary, and undertake reform of the Prosecutor’s Office that ensures its independence and impartiality and separate the criminal prosecution functions from those investigating alleged abuse (Canada);

97.109⁸. According to Ukraine, the Government was “committed to the proper implementation of the principles of a fair trial set out in Article 14 of the ICCPR, as proved by the procedural rules of national law”⁹.

9. However, reports gathered by L4L and information that we received from lawyers in Ukraine, demonstrate that Ukraine does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

D. Promotion and protection of human rights

(i) No effective guarantees for the functioning of lawyers¹⁰

10. L4L has been informed that lawyers in Ukraine are sometimes subjected to improper interference by members of law enforcement agencies or investigative bodies. It was reported that searches were carried out in lawyers’ offices, 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’¹¹.
11. Furthermore, we were informed that in some instances, lawyers have received notifications to appear for questioning as a witness and for the conduct of other investigative actions within criminal proceeding relating to their clients’ cases.¹² Article 22 of the Basic Principles stipulates that: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential”. Furthermore, 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 advocate¹³. Calling lawyers as witnesses in their own clients’ cases could frustrate the principle of client-attorney confidentiality and thus the lawyers’

⁵ Recommendation 97.95.:Fully implement the new criminal procedure code, including necessary constitutional and statutory reforms needed to limit the powers of the Prosecutor General’s office, and establish an impartial and independent criminal justice system, in line with Ukraine’s obligations under the ICCPR (United States of America);

⁶ Recommendation 97.96: Full implementation of the new criminal procedure code, and that the independency of judges is strengthened, the role of the public prosecution is balanced and corruption in judiciary system is tackled (Germany);

⁷ Recommendation 97.98: Continue to make efforts with regard to reform in criminal proceedings, including enhancing the independence and impartiality of the Prosecutor’s Office, as well as the updating of pretrial investigation procedures (Republic of Korea);

⁸ Recommendation 97.109.:Ensure non-selective prosecutions on its territory and a fair trial for persons being prosecuted, in conformity with the standards as under article 14 of the ICCPR, including the right to appeal laid down in paragraph 5 (Netherlands);

⁹ Report of the Working Group on the Universal Periodic Review Ukraine, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/22/7/Add.1, page 6.

¹⁰ Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

¹¹ http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Ukraine_-_Ukraine/2016/EN_PECO-HRL_20160406_Ukraine_CCBE_letter_concerning_violations_of_lawyers_rights.pdf

¹² http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Ukraine_-_Ukraine/2014/EN_HRL_20140415_Ukraine_Concerns_regarding_incidents_of_serious_violation_of_the_rights_of_lawyers_in_Ukraine.pdf

¹³ http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Ukraine_-_Ukraine/2016/EN_PECO-HRL_20160406_Ukraine_CCBE_letter_concerning_violations_of_lawyers_rights.pdf

ability to represent their clients.

12. Lawyers are also the victim of threats, intimidation and physical attacks and even killings¹⁴. This is demonstrated by the following cases:

Yuri Grabovski and Oksana Sokolovskaya

Yuri Grabovski was the managing partner of law firm 'Garbovsky and Co'. Together with his colleague Oksana Sokolovskaya, he represented Russian national Aleksandr Aleksandrov, who along with Evgeniy Yerofeyev, was detained in 2014 May in the Lugansk Region in Eastern Ukraine and accused of terrorism and a number of other crimes. Since they started working on the case, both Oksana Sokolovskaya and Yuri Grabovski have repeatedly spoken publicly about the harassment and intimidation they have been subjected to, including by the Ukrainian authorities.¹⁵ On 25 March 2016, police discovered the Yuri Grabovski. The lawyer was reportedly found shot and buried near the Kiev-Odessa main route.¹⁶

13. We have furthermore been informed that lawyers are also subjected to criminal investigations and proceedings in connection to their professional activities:

Victor Smaliy

Victor Smaliy was arrested without a proper warrant on December 9, 2013. He was beaten, held in a car for several hours with a bag on his head and did not have access to his lawyer for some period of time. Victor was charged with attempted murder of a judge after the hearing at a local court in the case of a well-known journalist Andrei Dzinziy. It was commonly believed that the charges were trumped up in order to stop Victor from representing civil activists in local courts. During his detention, Victor's procedural rights were violated many times and his lawyer had to make many motions appealing investigators and prosecutors actions. Victor Smaliy was released in 2014.

14. It was brought to L4L's attention that the prosecution plays a dominant role in criminal proceedings as a result of which lawyers are not in an equal position to represent their clients. One example is that attorneys are often not notified or are untimely notified of the court hearings¹⁷. Furthermore, the materials submitted by the prosecutors, and requests, for example to hear witnesses, are almost always granted, while those from the defence are almost often put on discussion.¹⁸

¹⁴ In 2011, the Special Rapporteur on human rights defenders also expressed concern at the reported increase of violence and other forms of harassment against human rights defenders. The Special Rapporteur urged Ukraine to ensure that human rights defenders do not face harassment or discrimination and to create a safe environment conducive to their work. A/HRC/16/44/Add.1, para. 2331., and A/HRC/19/55/Add.2, para. 379.

¹⁵ <https://www.amnesty.org/en/latest/news/2016/03/ukraine-murder-of-lawyer-a-chilling-blow-to-justice/>

¹⁶ <http://www.advocatenvooradvocaten.nl/11636/ukraine-lawyer-yuri-grabovski-killed/>

¹⁷ 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, page 19, available on: http://en.unba.org.ua/assets/uploads/news/zvity/2016_03_16-Report-violation.pdf

¹⁸ 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, page 19, available on: http://en.unba.org.ua/assets/uploads/news/zvity/2016_03_16-Report-violation.pdf

15. Recommendations:

- (a) to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**
- (b) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (c) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;**
- (d) to take all measures necessary to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with articles 16(c) and 26, 27, 28 and 29 of the Basic Principles;**

(ii) [No effective access to legal assistance](#)

16. The above mentioned violations of the Basic Principles do not only undermine the proper functioning of the role of lawyers, but also every person's right to fair trial, of which the principles of equality of arms and effective access to legal assistance form an essential element.¹⁹

Recommendation:

- (e) That the Ukraine government continues to implement in legislation as well as in practice recommendations 97.92, 97.95, 97.96, 97.98 and 97.109 of the UPR cycle in 2012 to ensure the proper functioning of the judicial system and the right to a fair trial.**

¹⁹ Basic Principles on the Role of Lawyers, principles 1, 2, 7.