



ПОСТІЙНЕ ПРЕДСТАВНИЦТВО УКРАЇНИ ПРИ  
ВІДДІЛЕННІ ООН ТА ІНШИХ МІЖНАРОДНИХ  
ОРГАНІЗАЦІЯХ У ЖЕНЕВІ

MISSION PERMANENTE DE L'UKRAINE AUPRES  
DE L'OFFICE DES NATIONS UNIES ET DES AUTRES  
ORGANISATIONS INTERNATIONALES A GENEVE

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№ 240/017

The Permanent Mission of Ukraine to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the communication by Special Rapporteur on the independence of judges and lawyers Mr. D.García-Sayán № AL UKR 3/2019 of 31 May 2019, has the honour to transmit herewith information submitted by the relevant authorities of Ukraine.

The Permanent Mission of Ukraine avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Encl.: as stated, on 3 pages.



Geneva,

August 2019

Office of the United Nations  
High Commissioner for Human Rights  
Geneva

**INFORMATION OF THE UKRAINIAN AUTHORITIES  
on the communication by the Special Reporter  
on the independence of judges and lawyers  
regarding alleged threats against *attorney Ms. Valentyna Bohatchenko***

**Response to Questions No. 1, 2**

1. Pursuant to the order of the Criminal Investigations Department, officers of Volnovaskyi Police Division of the Main Department of the National Police in Donetsk region verified the facts reflected in the communication of the Special Reporter. Relevant communication was recorded in the Unified Register of Communications and Allegations on Criminal Offences and other Events of the abovementioned Police Division (No. 1290 of July 9, 2019).

2. On July 9, 2019 Ms. Valentyna Bohatchenko was interrogated by the police' investigating group. According to explanations of Ms. Bohatchenko, she has a practice in law since 2006, and since 2018 - had been lawyer of Mr. Dzhumaiev prosecuted for alleged membership in a terrorist group or terrorist organizations (an offence under Article 258-3 (1) of the Criminal Code of Ukraine). Ms. Bohatchenko also informed that in the late March of 2019 she was phoned by her friends and told that in her native town there are leaflets containing offensive language against her. In period from 28 to 30 March of 2019 she personally observed a few of leaflets with the similar content. During examination of the place of event any leaflets containing threats against Ms. Bohatchenko were not identified.

3. The collected materials were transmitted to the Investigation Unit of the Vuhledarskyi Police Unit of the Volnovaskyi Police Division of the Main Department of the National Police in Donetsk region. As reported by the Investigation Unit, there are no signs on these facts that would confirm the criminal offence. Thus, that information cannot be included in the Unified Register of Pre-Trial Investigations. The collected materials have been archived according to the legislation's requirements.

4. Nowadays, the above materials are in the Public Prosecutor's Office in Donetsk region. Ms. Valentyna Bohatchenko has not appealed to the police on intimidation or other unlawful actions against her committed as a result of her professional activity as an lawyer in the case of Mr. Dzhumaiev.

**Response to question No. 3  
on measures taken by Ukrainian authorities to ensure the independence of the  
legal profession and to enable attorneys to perform their professional functions  
freely and without any intimidation or improper interference**

5. According to Article 1322 of the Constitution of Ukraine, the bar is operating to provide professional legal aid. The independence of legal profession shall be guaranteed. Principles of organization and operation of bar in Ukraine are determined in the Law of Ukraine No. 5076 of July 5, 2012 "On the Bar and Practice of Law".

6. Pursuant to Article 4 (1) of the Law "On the Bar and Practice of Law", the practice of law shall be based on the principles of the rule of law, legality, independence, confidentiality and avoidance of conflict of interest. Article 5 of the Law defines general basis of cooperation between the bar and the state, notably the bar of Ukraine shall be independent of the governmental bodies, bodies of local self-government, their officials and officers. The state shall create proper conditions for the operation of the bar of Ukraine and shall ensure compliance with the guarantees of the practice of law.

7. Attorneys' independence in a course of performing the practice of law is ensured *inter alia* by legally established guarantees of advocacy. As prescribed by Article 23 of the abovementioned Law, 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:

- it is prohibited to interfere with or impede the practice of law;
- special mechanism of criminal prosecution against an attorney and bringing him/her to criminal liability is envisaged, specifically 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; it is prohibited to examine, disclose, demand production of or seize documents relating to the practice of law; a report of a suspected criminal offense by an attorney may be made exclusively by the Prosecutor General of Ukraine, his/her deputy, the prosecutor of the Autonomous Republic of Crimea, the region, and the cities of Kyiv and Sevastopol;
- life, health, honor and dignity of an attorney and of his/her family members and their property are under protection of the state, and any encroachments thereupon shall entail liability established by law;
- an attorney is guaranteed the right to the measures of safety and protection in respect of him while he/she is participating in criminal proceedings;
- it is prohibited to interfere with private communication of an attorney and a client and as well as with the legal stance of an attorney.

8. According to Article 2 (3) of the abovementioned Law, the bar self-government operates for the purpose to ensure proper practicing of law, compliance with the professional guarantees, protection of advocates' professional rights, high level of professionalism of advocates and resolution of the issues associated with the disciplinary liability of advocates. Provisions of Article 45 (2) of the Law provide for that the Ukrainian National Bar Association (hereinafter - UNBA), *inter alia*, protects professional rights of advocates and provides guarantees for practice of law.

9. Within the UNBA, the Committee on protection of advocates' professional rights and guarantees was created to protect advocates' professional and other rights, to strengthen the guarantees of legal practice and to provide with necessary conditions for the effective and efficient performance by advocates of their professional duties. This Committee may take necessary measures to protect an attorney only if he/she addresses the Committee, in particular:

- provide prompt reaction to every appeal regarding the violation of the rights of an attorney and guarantees of practice of law (*note: starting from April 19, 2016, the date of commencement of the register of applications, up to the present date the Committee has considered 306 appeals concerning violation of the rights of attorneys and guarantees of practice of law*). Reacting to an appeal the Committee, in particular, offers suggestions for eliminating of the violations revealed and suggestions on prosecution of perpetrators of violations;
- provide for the development of international cooperation in order to protect the rights of attorneys and guarantees of practice of law;
- conduct an explanatory work amongst attorneys' community on the methods and practice of self-defense of their rights and guarantees of practice of law;
- participate in the development and implementation of a system of measures carried out in conjunction with law enforcement agencies to protect life, health, honor, dignity, property of attorneys and their families from criminal offenses, other unlawful actions, etc.

Thus, according to the information provided by the UNBA attorney Ms. Bohatchenko did not apply to it to protect her professional rights.

10. Rules of Advocates' Ethics adopted on June 9, 2017 declare that the main basic principles of attorneys' ethics are independence and freedom of an attorney in the performance of his or her professional rights and duties (Article 6). In order to comply with that principle an attorney while performing professional duties is obliged to counter to any efforts of interfering his/her independence, be courageous and principled in the performance of his/her professional duties, defending professional rights and guarantees of practice of law as well as to use them efficiently for securing best interest of a client.

11. In order to ensure the guarantees provided by the above Law, the Criminal Code of Ukraine stipulates criminal liability for:

- violation of the right to defense through the failure to provide access to a defense lawyer and also any other serious violation of the right of a suspected, accused or defendant to defense, if committed by investigator, prosecutor or judge (Article 374);

- interference with activity of a defense lawyer or a legal representative of a person impeding the lawful activity of a lawyer or a legal representative of a person on the provision of legal aid or violation of legal guarantees of their activity and professional secrets (Article 397);

- threats or violence against a defense lawyer or a legal representative of a person (Article 398);

- willful destruction or impairment of property owned by a defense lawyer or a legal representative of a person (Article 399);

- trespass against life of a defense lawyer or a legal representative of a person in connection with their activity related to the provision of legal aid (Article 400).

12. In order to create necessary conditions for appropriate administration of justice, protection of individual's life, health, housing, property from unlawful infringements the Law of Ukraine No. 3782 of December 23, 1993 "On securing safety of persons involved in criminal justice" stipulates a set of legal, technical and other measures applicable *inter alia* to an attorney, counsel of a victim, counsel of plaintiff. Among applicable measures directed on securing safety of such persons are, particularly, personal security, protection of housing and property; providing with the personal protective equipment and tools of alert; relocation to another place of residence (Article 7).

13. As for the protection of attorneys directly during a trial, in 2018 amendments to the legislation established a full-scale Court Guard Service mandate of which is regulated by the Law of Ukraine "On Judiciary and the Status of Judges". In accordance with Articles 160, 161 of that Law, the Court Guard Service is a state authority within the judiciary system aimed at maintaining public order in the court, halting contempt of court, providing security within court's premises, to institutions and agencies of justice system, ensuring personal security of judges and members of their families, court staff as well as providing security within the court to participants of a trial (including attorneys, lawyers).

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