

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
AL UKR 3/2019

31 May 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations regarding the threats received by lawyer **Valentyna Bohatchenko**, in relation to the exercise of her profession.

According to the information received:

In May 2018, Ms. Bohatchenko, a Ukrainian lawyer, signed a retainer with Mr. Roman Dzhumaiev, a citizen of Ukraine, prosecuted for his alleged membership of an armed groups of the self-proclaimed 'Donetsk people's republic' in 2014-2015, under article 258-3 (membership in a terrorist group or terrorist organization) of the Criminal Code of Ukraine.

Mr. Dzhumaiev was placed in pre-trial detention in 2017, until his custodial measure of restraint was changed by the court to "round-the-clock" house arrest on 3 July 2018. On 17 December, a district court granted the prosecutor's motion to remand him in custody again. On 13 February 2019, the pre-trial detention was extended until 7 April.

On 22 March, after several postponements, a court hearing took place and the court rejected the prosecutor's motion to extend remand in custody for the defendant for additional 60 days. Following this decision, Halyna Odnorih, an activist, started publishing negative posts on Facebook, calling the defendant a "terrorist" and criticizing the judges for releasing him. Some comments under the posts allegedly contained offensive language and threats of physical violence towards the defendant, Ms. Bohatchenko and the judges. Moreover, following these posts some media outlets published articles with headlines, such as "Marinskyi court released a terrorist".

On 30 March 2019, Ms. Bohatchenko was informed that her town of residence, Vuhledar was covered with leaflets containing threatening, intimidatory and offensive language against her. Later on, Ms. Bohatchenko found such leaflets in the vicinity of her home.

Without prejudging the accuracy of the information made available to us, we express concern for the threats and intimidation against Ms. Bohatchenko for the legitimate exercise of her profession as a lawyer.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information on the measures taken to ensure the safety and integrity of Ms. Bohatchenko and that she can exercise as a lawyer without any interference, pressure, threat or intimidation of any kind.
3. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9 and 14, of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Ukraine on 12 November 1973. Article 9 states that everyone has the right to liberty and security of person. Article 14 provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to communicate with counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency’s Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 13 provides that the duties of lawyers towards their clients include advising clients as to their legal rights and obligations, and assisting clients in every appropriate way, including taking legal action to protect their interests. Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Principle 17 states that where the security of lawyers is threatened as a result of discharging their functions, the authorities are responsible for their adequate safeguard. Finally, Principle 18 affirms that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.