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Ukraine: Lawyer Andriy Visnevsky wrongfully disbarred for exercising freedom of expression

The International Commission of Jurists (ICJ) is concerned at the recent disbarment of lawyer Andriy Vishnevsky, Director of the Coordination Centre of Legal Aid of the Ministry of Justice of Ukraine. The ICJ considers that his disbarment, which resulted from his public comments critical of the Ukrainian bar association, interferes with his capacity to freely discharge his professional functions as a lawyer. Furthermore, it constitutes a violation of his right to freedom of expression, and risks unduly constraining lawyers in legitimate participation in public debate.

The ICJ calls on the Ukrainian bar association to reinstate Andriy Vishnevsky to the bar so that he can resume his status as an accredited lawyer.

Andriy Vishnevsky was disbarred on 10 September, following a hearing before the Qualification-Disciplinary Commission of Kiev Region Advokatura. Disciplinary proceedings were initiated based on two separate complaints: one submitted by the Ukrainian national bar association on 24 June 2015; and the other by Ukrainian Parliament Member Rybalka S.V. on 22 June 2015.

The complainants alleged that Andriy Vishnevsky "humiliated the bar, every lawyer, destroyed respect of the society to the bar in the State, in contradiction with the European standards". They cited his comments made at a conference on 15 June 2015 at the premises of the Supreme Court of Ukraine, where he presented his report "The bar and free legal aid: approaches to the reform". He made a number of comments critical of the legal profession. These included his assessment that the bar association was "in a dire state"; a reference to "low ethical standards and professional level of the bar", including that lawyers are "the main corruption element"; and a claim that "the phenomenon of police lawyers is not counteracted by the national bar association and not commented upon in any way". The decision quoted him as saying that "if the bar is not reformed as soon as possible in accordance with the principles and standards of the Council of Europe, it can become a hindrance to the implementation of the judicial reform".

The Disciplinary Chamber came to the decision that the statements of Andriy Vishnevsky were contrary to the law and the Code of Lawyers' Ethics and that he should therefore be disbarred for the statements made during the conference.

The ICJ considers the Chamber's decision to contravene fundamental and universal principles on the independence of the legal profession. If applied generally, this interpretation of the Code of Ethics would effectively prevent lawyers from critically debating the governance of the legal profession. The UN Basic Principles on the Role of Lawyers provide that while lawyers should "maintain the honour and dignity of their profession as essential agents of justice" they, like other persons, "shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights."

The right to freedom of expression is protected in international human rights law, including the International Covenant on Civil and Political rights and the European Convention on Human Rights, treaties to which Ukraine is a party. Under the European Convention on Human Rights, where matters of public interest are discussed there is a particularly narrow scope for restriction of freedom of expression. Disciplinary action against a lawyer, solely on the grounds

of comments critical of the bar association, made at a conference convened to debate aspects of the justice system, amounts to an illegitimate interference with freedom of expression.

The ICJ is concerned that such punitive measures are likely to have a chilling effect on freedom of expression of lawyers in Ukraine and in particular on their ability to engage in debate on reform of the justice system. It is important, for any justice system, that such debate take place with the active participation of the legal profession, as lawyers are amongst those best placed to identify and criticize the deficiencies of the justice system and make informed proposals for reform.

The ICJ calls on the Ukrainian bar association to reinstate Andriy Vishnevsky as a lawyer. Furthermore, the ICJ recommends that the interpretation of the Code of Ethics should be reviewed and guidance should be issued to ensure that the Code of Ethics is not applied to stifle public debate among lawyers on ways to reform the justice system in Ukraine.

Background information:

In its decision of 10 September, the Qualification-Disciplinary Collegium found that article 12 (1)(2) of the Rules of Lawyers' Ethics "impose an obligation on the attorney in all his [/her] activities to display respect for the legal profession, which he [/she]represents, its essence and public role, to promote retention and increase of respect for it in the society and not to commit acts aimed at damage the prestige of the bar and advocacy (part 4 of Art. 12 of the Rules of attorney's ethics)".The Chamber further decided that Mr Vishnevsky failed to comply with "fundamental provisions on the activities of a lawyer" including Article 21(1) para.1 of the Law of Ukraine "On Advokatura and Advocates' Activity" and the provisions of the Rules of Lawyers' Ethics, of Articles 51, 52, 54 "according to which a lawyer has no right in his legal practice to use means and methods that contravene applicable laws or regulations of lawyers' ethics and by all his activities (in all areas of lawyers, professional, social, publicity and others), a lawyer should display respect for the bar, which he represents, its essence and public role, to promote retention and increase of respect for it in the society and must not commit actions aimed at damage the prestige of the bar and advocacy (Part 3 of Art .7, parts 1,2,4, Article 12 of the Rules of attorney's ethics)".

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