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**INTERNATIONAL COMMISSION OF JURISTS
SUBMISSION FOR THE PREPARATION BY THE HUMAN
RIGHTS COMMITTEE OF A LIST OF ISSUES FOR THE
EXAMINATION OF THE EIGHTH PERIODIC REPORT OF
UKRAINE**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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ICJ submission to the Human Rights Committee for the preparation of a List of Issues on Ukraine

A. Introduction

1. During its 127th session from 14 October to 8 November 2019, the UN Human Rights Committee (the Committee) will prepare and adopt a List of Issues in view of its examination of Ukraine's eighth periodic report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) during its 129th session in 2020.
2. In light of this, the International Commission of Jurists (ICJ) welcomes the opportunity to make the following submission, which summarizes concerns regarding the security and independence of the legal profession and Ukraine's compliance with and implementation of its obligations under Articles 2, 6 and 14 of the ICCPR, as well as the UN Basic Principles on the Role of Lawyers.

B. Background

3. In the aftermath of the change of the government in 2014, and Ukraine's armed conflict in the East of Ukraine, the security situation for lawyers and other human rights defenders has deteriorated significantly. Lawyers and other human rights defenders have become regular targets of attack, harassment and criminal prosecution.¹ Often, in the aftermath of such attacks perpetrators enjoy complete impunity.²

C. Security of lawyers

4. As regards lawyers, in particular, States must ensure that they are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference.³ Where the security of lawyers is threatened as a result of discharging their functions, they must be adequately safeguarded by the authorities.⁴
5. Under international human rights law, and Article 2.1. of the ICCPR in particular, States have a positive obligation to take measures to protect individuals within their jurisdiction against acts committed by private persons or entities that would impair the enjoyment of their rights under the ICCPR.⁵ They must also ensure that a prompt and thorough investigation into attacks against lawyers be undertaken by an independent and impartial authority.⁶
6. Attacks on lawyers are likely to lead not only to violations the rights of the individual lawyers concerned, but also to violations of the rights of the clients they represent, including the right to a fair trial (Article 14 ICCPR), the right to liberty (Article 9 ICCPR), the right to freedom from torture or other ill-treatment (Article 7 ICCPR), and the right to an effective remedy (Article 2.3 ICCPR) as attacks on lawyers may, in turn, hinder the provision of effective legal representation.

¹ Ukraine: ICJ stresses the need for security of lawyers and an independent legal profession, <https://www.icj.org/ukraine-icj-stresses-the-need-for-security-of-lawyers-and-an-independent-legal-profession/>.

² E.g. see Amnesty International, Human Rights Report 2017/2018, Ukraine, available at <https://www.amnesty.org/en/countries/europe-and-central-asia/ukraine/report-ukraine/>,

³ Article 16, Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (UN Basic Principles).

⁴ Article 17 UN Basic Principles.

⁵ Article 2 para. 1 ICCPR; UN Human Rights Committee, General Comment n° 31, UN Doc CCPR/C/21/Rev. 1/Add. 13, 26 May 2004, para. 8.

⁶ Article 2 paragraph 3 ICCPR; UN Human Rights Committee, General Comment n° 20, UN Doc HRI/GEN/1/Rev. 7, 10 March 1992, para. 14.

7. Both the Criminal Code⁷ and the Criminal Procedure Code of Ukraine⁸ provide regulations protecting lawyers against certain crimes and allowing them procedural rights and guarantees. In particular, articles 397-400 of the Criminal Code specify crimes committed against lawyers such as interference with professional activity, threats of violence, destruction of property or murder or attempted murder of a lawyer. Article 374 establishes criminal liability for the violation of the right to defence. The latter is also regulated in the Criminal Procedure Code⁹ along with rights of the defendant¹⁰ and rules and guarantees on defence lawyers' participation in criminal proceedings.¹¹

a) Right to life (ICCPR Article 6)

8. The security situation of lawyers in Ukraine has deteriorated since 2013.¹² Lawyers are generally at risk when involved in high-profile and politically sensitive criminal cases.¹³ The ICJ is particularly concerned about killings of lawyers, including at least nine killings that have been reported between 2013 and 2019.¹⁴ The following cases of killings apparently connected with lawyers' professional activities are of particular concern.
9. In 2015, Yuri Ihnatenko was kidnapped and murdered a week after winning a case where he represented an elderly woman, a victim of a property fraud scheme in which the police were allegedly involved.¹⁵
10. In 2016, Viktor Loiko was killed in his office while representing two defendants in cases related to drug trafficking with alleged police involvement.¹⁶
11. In 2016, Yuri Grabovski was found dead after he had gone missing for three weeks.¹⁷ A video where he declared he would stop representing one of his clients and admitted that accepting the case had been a mistake was later released.¹⁸
12. In August 2019, Olexandr Ivanov was killed with an automatic weapon near a Pre-trial Detention Centre after visiting a client.¹⁹ The fatal shots were fired from a car by unknown persons.²⁰
13. These instances of attacks on lawyers, apparently connected with the defence of their clients, are particularly alarming as they show a clear pattern of violent attacks, without any protection plan or security measures being put in place by

⁷ Articles 374, 397, 398, 399 and 400 of the Criminal Code of Ukraine.

⁸ Articles 20-3, 42-3, 46-5 of the Criminal Procedure Code of Ukraine.

⁹ Article 20-3 of the Criminal Procedure Code of Ukraine.

¹⁰ Article 42-3 of the Criminal Procedure Code of Ukraine.

¹¹ Article 46 of the Criminal Procedure Code of Ukraine.

¹² Ukrainian National Bar Association, report, Violations of attorneys' professional rights and guarantees in Ukraine, 2013-2018. International Society for Human Rights, Ukrainian Bar Association, report, Defenceless defenders: report on infringement of the rights and guarantees of attorneys in Ukraine, 2016-2018.

¹³ Ukraine: ICJ stresses the need for security of lawyers and an independent legal profession, <https://www.icj.org/ukraine-icj-stresses-the-need-for-security-of-lawyers-and-an-independent-legal-profession/>.

¹⁴ Ukrainian National Bar Association, report, Violations of attorneys' professional rights and guarantees in Ukraine, 2013-2018.

¹⁵ Ukraine: violent death of a lawyer is an attack on the legal profession, <https://www.icj.org/ukraine-violent-death-of-a-lawyer-is-an-attack-on-the-legal-profession/>

¹⁶ Ukraine: violent death of a lawyer is an attack on the legal profession, <https://www.icj.org/ukraine-violent-death-of-a-lawyer-is-an-attack-on-the-legal-profession/>

¹⁷ ICJ, *Ukraine: violent death of a lawyer is an attack on the legal profession*, 29 March 2016, available at <https://www.icj.org/ukraine-violent-death-of-a-lawyer-is-an-attack-on-the-legal-profession/>.

¹⁸ Lawyer Defending Russian Soldier in Ukraine Is Found Dead, <https://www.nytimes.com/2016/03/26/world/europe/ukraine-russia-yuri-grabovsky.html>.

¹⁹ ICJ, *Ukraine: killing of lawyer must be investigated promptly*, 22 August 2019, available at <https://www.icj.org/ukraine-killing-of-lawyer-must-be-investigated-promptly/>.

²⁰ ICJ, *Ukraine: killing of lawyer must be investigated promptly*, 22 August 2019, available at <https://www.icj.org/ukraine-killing-of-lawyer-must-be-investigated-promptly/>.

the State to protect lawyers known to be at risk of violence, contrary to Ukraine's obligations under article 6 of the ICCPR.

b) Physical and verbal attacks (Article 9 of the ICCPR)

14. The instances of physical and verbal attacks against lawyers have also increased significantly from two registered cases in 2013 and 2014 to 9 and 19 cases of attacks in 2016 and 2017, respectively.²¹ Lawyers are reportedly subjected to beatings, sometimes in the presence of their clients or other witnesses, in order to compel them to stop representing individuals in high-profile and politically sensitive cases, to prevent them from seeing their clients or to unlawfully obtain documents protected by attorney-client privilege.²²
15. Physical attacks have included, among other examples, breaking into a lawyer's apartment and beating with a baseball bat,²³ and assault in the street with metal sticks and knives²⁴.
16. Lawyers also face verbal harassment and intimidation, in particular from far-right organizations.²⁵ As the ICJ heard during its mission²⁶ from various sources, far right organizations attended court hearings,²⁷ surrounded court buildings with placards,²⁸ held meetings next to courthouses as means of intimidating the defence, the prosecution and the court.²⁹

c) Lack of investigation and impunity

17. Around 90 percent of cases of attacks on activists, including lawyers, are reported not to be promptly and thoroughly investigated.³⁰ The ICJ learned that a common problem lawyers encounter is the reluctance of officials to initiate a criminal investigation and record it in the national Unified Register of Pre-trial Investigations. Many lawyers have reported that an investigation is initiated only after an official complaint regarding the authorities' failure to act is lodged either with disciplinary bodies³¹ or with the courts. However, only rarely do such cases result in criminal conviction of perpetrators or compensation ordered to victims.³²
18. Even when proceedings are initiated, an effective investigation is often not carried out and perpetrators not prosecuted, even in the presence of material evidence such as video recordings.³³ In other cases, perpetrators are identified and prosecuted but those who have ordered the attack are rarely identified.³⁴ The

²¹ Ukrainian National Bar Association, report, Violations of attorneys' professional rights and guarantees in Ukraine, 2013-2018, page 4.

²² Ukraine: ICJ stresses the need for security of lawyers and an independent legal profession, <https://www.icj.org/ukraine-icj-stresses-the-need-for-security-of-lawyers-and-an-independent-legal-profession/>.

²³ UNBA report, p. 26.

²⁴ UNBA report, p. 18.

²⁵ A/HRC/41/CRP.2, OHCHR, UNHRMM Report on the human rights situation in Ukraine 16 February to 15 May 2019, para 63.

²⁶ The ICJ carried out a one-week mission to Ukraine from 4 to 8 March 2019 to assess the situation of security and independence of the legal profession, during which it met with a range of key actors – lawyers, UNBA leadership and legal experts, the NGOs and State officials, human rights defenders and journalist who cover legal issues and a number of IGOs which provided valuable insights based on their systemic work in the country.

²⁷ E.g. unambiguous slogans "kollorady – out, in jail!" referring to people who opposed Maidan in 2014.

²⁸ E.g. "Strict Sentence to Murderers of Babaev!". At the same time on the car of one of the lawyers was pasted a poster "Murderer's defender!" in case of A. Melnyk, A. Kryzhanovsky, I. Pasichny and I. Kunik (sessions 19-21.11.18)

²⁹ Anton from ISHR, cite cases

³⁰ Ukrainian National Bar Association, report, Violations of attorneys' professional rights and guarantees in Ukraine, 2013-2018, page 12.

³¹ In 2017 out of 171 complaints submitted by lawyers regarding prosecutors' inactivity/violation of criminal procedure 146 were rejected, in first half of 2018 out of 198 complaints, 180 were rejected.

³² UNBA submission to the Parliamentary Committee on Human Rights, April 2019

³³ UNBA submission to the Parliamentary Committee on Human Rights, April 2019; or UNBA Roundtable on the violations of rights of lawyers and professional guarantees, 6 March 2019

³⁴ European Observatory of Crimes and Security, *One year after her death, the question remains: Who killed Kateryna Handziuk?*, August 15, 2019, available at <https://eu-ocs.com/one-year-after-her-death-the-question-remains-who-killed-kateryna-handziuk/>

high level of impunity is likely to contribute to the continuing high level of violent attacks and killings of lawyers described above.

19. **In light of the above, the ICJ recommends that the following questions be included in the List of Issues for the examination of Ukraine:**

- **What measures have been taken by the State party to ensure that lawyers are protected in and outside of courts, especially in cases where there is a real risk of violent attacks by armed groups?**
- **What measures have been taken by the State party to ensure protection of lawyers against physical and verbal attacks, including in cases where they represent clients in high-profile and politically sensitive cases?**
- **What measures have been taken by the State party to ensure an effective investigation of the killings of Yurii Ihnatenko, Viktor Loiko, Yuri Grabovski and Olexandr Ivanov and to ensure that the perpetrators are prosecuted and brought to justice?**

D. Procedural harassment of lawyers (Article 14 of the ICCPR)

20. In Ukraine, lawyers often face the threat of undergoing criminal prosecutions or disciplinary investigations when representing defendants in high-profile or politically sensitive cases.³⁵

21. Such actions raise issues regarding the right of the clients of the concerned lawyers to an effective defence under Article 14 ICCPR and under the UN Basic Principles on the Role of Lawyers, which provide that lawyers should not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.³⁶ Moreover, lawyers should not be identified with their clients or their clients' causes as a result of discharging their function.³⁷

a) Criminal proceedings

22. According to Ukrainian law, a lawyer cannot be prosecuted on account of his or her professional activity, for statements or opinions expressed in the context of his or her cases, including those reflecting his or her client's position.³⁸ Moreover, specific rules and limitations apply to the initiation of investigative or procedural actions against a lawyer.³⁹

23. It has, however, been reported that, in recent years, lawyers have increasingly become subject to prosecution and detention in connection with the clients they

³⁵ Ukraine: ICJ stresses the need for security of lawyers and an independent legal profession, <https://www.icj.org/ukraine-icj-stresses-the-need-for-security-of-lawyers-and-an-independent-legal-profession/>.

³⁶ Article 16 of UN Basic Principles.

³⁷ Article 18 of UN Basic Principles.

³⁸ Article 23, paras. 14-15 of the Law on Bar

³⁹ Article 23, para. 3 of the Law on Bar providing that any investigative action regarding a lawyer requires authorization by the court and can only be initiated by the Prosecutor General, his or her deputy, or the head of the regional public prosecutor's office; Article 23-1-13 of the Law on Bar stating that the note of suspicion might only be issued by a prosecutor; Article 481-1-1 of the Criminal Procedure Code of Ukraine.

represent.⁴⁰ This is reported to be a way for the investigating authorities to obstruct the representation by the lawyer of their clients.⁴¹ Initiation of criminal proceedings against lawyers can also aim to make them withdraw allegations of ill-treatment by law-enforcement officers.⁴²

24. Constant violations of lawyers' rights were for example reported throughout the trial of former president Viktor Yanukovich, which lasted two years⁴³. His privately hired lawyers were removed from the case and criminally prosecuted,⁴⁴ with one of his public defenders being forced under threat of prosecution to carry out the defence despite insufficient time to prepare it.⁴⁵
25. In 2017, lawyer Oleksandr Chibirdin was arrested and detained and charged with fraud, the crimes his client was charged with. The ICJ learned from the Ukrainian Bar Association that he remains in custody as of the date of the submission of the present document. Another lawyer, Andriy Domanskyi, known for defending politically sensitive cases, is now facing prosecution for his representation of the Ukrainian branch's chief editor of a Russian news agency.⁴⁶

b) Disciplinary proceedings

26. In Ukraine, grounds for disciplinary proceedings against lawyers are laid out in the Law on Advokatura and Advocates' Activity.⁴⁷ During its recent mission to Ukraine, the ICJ was informed of cases in which law-enforcement officers, as well as judges, use the threat of or initiate disciplinary proceedings as a means of intimidation. Reportedly, this usually happens in instances where the lawyer does not agree with the position of the prosecutor or the judge.⁴⁸
27. Furthermore, irregularities have been reported in such disciplinary proceedings. It has been reported that some proceedings have taken place before authorities without jurisdiction over such proceedings, as they did not correspond to the lawyer's registered place of work.⁴⁹ In addition, hearings and decisions were said to happen in the absence of the involved lawyer.⁵⁰ It has also been stated that disciplinary penalties were imposed in the form of a suspension of the right to

⁴⁰ OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2019, paras. 112 and 117-e); OHCHR, Report on the human rights situation in Ukraine, 16 August to 15 November 2018, paras. 57 and 113; OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2018, paras 80 and 108.

⁴¹ In November 2013, criminal proceedings were initiated against Ihor Cherezov and information about his alleged crimes was sent out by e-mail to almost 300 persons to damage his reputation.

⁴² Victor Smalii, counsel of Andriy Dzyndzia, was arrested in December 2013. He was arbitrarily detained for a long time with numerous procedural violations. See also UNBA submission to the Parliamentary Committee on Human Rights, April 2019.

⁴³ More detailed information and reports on trial monitoring can be found in International Society for Human Rights, Ukrainian Bar Association, report, Defenceless defenders: report on infringement of the rights and guarantees of attorneys in Ukraine, 2016-2018., pp. 11, 33 and 36; International Society for Human Rights, report, Right to a fair trial in Ukraine, 2018, January 2019, pp.11, 96-111, available at https://humanrights-online.org/wp-content/uploads/2019/03/report_english_version.pdf.

⁴⁴ Ibid, see Criminal proceedings against Ms Prosyanyuk and Mr Goroshinsky, Mr Serdyuk, Mr Fedorenko, Ms Fazekosh and Mr Bilenko.

⁴⁵ International Society for Human Rights, report, Right to a fair trial in Ukraine, 2018, January 2019, p.11, available at https://humanrights-online.org/wp-content/uploads/2019/03/report_english_version.pdf.

Constant swapping of public defenders took place in this case as to not to give them time to properly familiarize themselves with the case before the hearings, and after they complained about lack of time for preparation they were instantly replaced by another public defenders.

⁴⁶ ICJ, *Ukraine: criminal proceedings against lawyer Andriy Domanskyi raise concerns*, 12 April 2019, available at <https://www.icj.org/ukraine-criminal-proceedings-against-lawyer-andriy-domanskyi-raise-concerns/>.

⁴⁷ Article 34 of the Law on Bar.

⁴⁸ In 2017, privately hired lawyers of former President Viktor Yanukovich have been pressured via disciplinary means. Judges of Pechersky District Court of Kyiv repeatedly filed complaints within the Kyiv Qualification and Disciplinary Commission of the Bar. See also Ukrainian National Bar Association, report, Violations of attorneys' professional rights and guarantees in Ukraine, 2013-2018, page 34.

⁴⁹ Article 33, para. 3 of the Law on Bar.

⁵⁰ International Society for Human Rights, Ukrainian Bar Association, report, Defenceless defenders: report on infringement of the rights and guarantees of attorneys in Ukraine, 2016-2018, p. 36, case of Olha Prosyanyuk, Oleksandr Horoshynskyi

practise law for a period ranging from one month to one year in case of failure by the lawyer concerned to pay his annual fees.

28. Such measures raise issues under the *UN Basic Principles*, according to which disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review⁵¹. All disciplinary proceedings should be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of the UN Basic Principles⁵² and must be processed expeditiously and fairly under appropriate procedures⁵³.

29. **In light of the above, the ICJ recommends that the following questions be included in the List of Issues for the examination of Ukraine:**

- **Has the State party taken any measures to address persistent reports of harassment of, intimidation and pressure on lawyers representing defendants in politically sensitive cases, such as cases related to national security and counterterrorism?**
- **Have any policy decisions been taken to address persistent reports of arbitrary criminal or disciplinary proceedings initiated against lawyers in the context of their legitimate professional activities?**
- **Please provide information on the current trials and disciplinary investigations of lawyers.**

⁵¹ Article 28 of UN Basic Principles.

⁵² Article 29 of UN Basic Principles.

⁵³ Article 27 of UN Basic Principles.