



EESTI ADVOKATUUR
ESTONIAN BAR ASSOCIATION

14 April 2014

Dear Mr. Reznikov

First, thank you for your appeal submitted to the Estonian Bar Association on 27/03/2014. The Estonian Bar Association deems the events described by you in your appeal of 27/03/2014 reprehensible and admits the existence of the problem not just in the framework of the specific case within one country but more generally.

The Estonian Bar Association, based on the preamble of the code of conduct for European lawyers emphasises that in a society based on respect for the rule of law, the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful execution of the tasks assigned to him within the limits permitted by law; the lawyer must serve the interests of justice, as well as the interests of persons whose rights and liberties he or she is entrusted to assert and defend. A lawyer's duty is not only to protect his or her clients, but also to be an adviser to the client. Respect for the lawyer's professional function is an important condition for the rule of law and a precondition of democracy in society.

The rules of each Bar Association or Law Society are based on its traditions. They are adapted to the structure of the legal profession, area of activity and in particular to the (Member) State, its judicial and administrative procedures and internal law. It is neither possible nor desirable to separate these rules from their context and also one must refrain from trying to apply these generally, as they are inherently incapable of such application. The rules of each Bar Association and Law Society are based, however, on the same values and in most cases provide evidence of a common foundation.¹

There are core principles that are similar throughout the European legal profession, even if these principles are expressed in slightly different ways in different jurisdictions. The core principles form a basis for a variety of national and international codes, which govern the conduct of lawyers. Both bar associations and law societies, together with courts, legislatures, governments and international organisations, should seek to support and defend the core principles in the public interest.

¹ The European Lawyers' Code of Ethics c. 1.2.2



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The Charter of core principles of the European legal profession² sets out the core principles of the legal profession of a lawyer, which, inter alia,³ are -

1) **The independence of the advocate and the freedom of the advocate handling the client's issues**

The essence of this principle is the unconditional right of the advocate to be free – politically, economically and intellectually – to perform their activities on advising and representing the client. This means that the advocate has to be independent of the state and other power structures and must not allow their independence to be compromised by inappropriate pressure from business partners.

The advocate must also remain independent of their client to be trusted by third parties and the courts. Without independence from the client, there can be no guarantee that the advocate's work is of high quality. The many duties to which an advocate is subject require his or her absolute independence and freedom from any external influence. This independence is as necessary for the creation of trust in the administration of justice as the impartiality of the judge. An advocate must therefore avoid jeopardising his or her independence and not to make concessions in adhering to his or her professional standards to the benefit of clients, the court or any third party. Independence is necessary both in extrajudicial matters as well as in the court.⁴

2) **The dignity and honour of the legal professions and the dignity of the individual lawyer**

In order for clients, third parties, the courts and the state to trust the lawyer, he or she must show that he or she has earned that trust. This is achieved by being a member of an honourable profession. A lawyer must not do anything that could damage his or her reputation or the reputation of the profession as a whole as well as the public's confidence in the profession. This does not mean that a lawyer must be a perfect individual, but it means that a lawyer shall not engage in disgraceful conduct in legal practice or other business, or even in personal life, which could lead to his or her professional reputation being damaged.

3) **Self-regulation of the legal profession**

One feature of dictatorial and other societies that are not free is that the state, either

² The European Charter of the core principles of the legal profession Adopted by the CCBE Plenary Session on 25/11/2006.

³ The list is not exhaustive and includes the principles more related to what was described in the address of the Ukrainian Bar Association 27/03/2014.

⁴ However, at c. 2.1



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overtly or covertly, controls the legal profession and lawyers' activities. Most of the legal professions of Europe reflect a combination of regulation and self-regulation. In many cases, the state, recognising the importance of the core principles, uses legislation to support them - for example, by providing legal support to confidentiality or by providing legal competence to the bar for the compilation of professional rules.

The Estonian Bar Association unreservedly shares the conviction of CCBE that only a strong element of self-regulation can guarantee the independence of the legal profession with respect to the state and, without guaranteeing independence, it is impossible for lawyers to execute their legal profession and their legal role.

These principles also apply to Ukraine and they must be jointly supported by judges, legislators, governments and international organisations.

In light of the above general principles of the legal profession, the Estonian Bar Association deems reprehensible what has been committed in respect of Ukraine's lawyer, referring in terms of an analogy to the Estonian Bar Association Act, which provides, among other things, that a lawyer should not, while arising from his or her profession, be equated to the client or his or her offence (BAA § 43 section 4).

In light of the problem raised by you, but not being familiar with the specific circumstance of the case of Mr. Denis Bugay and not knowing the relevant regulation of Ukraine, the Estonian Bar Association, in principle, shares the concerns of the Ukrainian Bar Association regarding the direct infringement of human rights occurred in the form of infringement of the Convention for the Protection of Human Rights and Fundamental Freedoms Article 5 ("The right to personal liberty and security"), which stipulates that everyone has the right to personal liberty and security. No one shall be deprived of his liberty, save in accordance with the procedure prescribed by law based on the specific grounds provided in the same article. / ___ /. Under clause 2 of the same Article, each person who is arrested shall be promptly notified, in the language that he or she understands, all the reasons for his or her arrest and the charges against him or her. In addition, according to Article 5, paragraph 4, everyone who is deprived of his liberty by arrest or detention, has the right to request proceedings by which the court would speedily decide the lawfulness of his detention and order his release if the detention is unlawful. In addition, the European Court of Human Rights held that even in the case of a criminal prosecution or execution of deprivation of liberty, or a detention order, or in the framework of a substantive criminal procedure, the (Member) States must maintain the duty to protect the ECHR or the national law that provides for fundamental rights.⁵

⁵ Judgment of the European Court of Justice (Second Chamber) of 05.30.2013. Case No. C-168/13 PPU (Jeremy F vs Premier ministre).



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In summing up the above arguments, the Estonian Bar Association is of the opinion that adhering to and the continued implementation of human rights and fundamental freedoms is the unconditional basic obligation of the rule of law. Regardless of the political state of play, full assurance and compliance with human rights as well as the free functioning of the legal profession must be guaranteed in every European country.

Sincerely,

On behalf of the Estonian Bar Association

Sten Luiga
Chairman of the Estonian Bar Association