



**HUMAN RIGHTS HOUSE
NETWORK**

HUMAN RIGHTS LAWYERS AT RISK

Making the Case for Protection of Legal Professionals in
Azerbaijan, Belarus, Moldova, Russia, and Ukraine

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Human Rights Lawyers at Risk
Making the Case for Protection
of Legal Professionals in Azerbaijan,
Belarus, Moldova, Russia, and Ukraine

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Human rights lawyers are both lawyers and human rights defenders. Guarantees and immunities for lawyers enshrined in national and international law must be implemented and respected, while human rights guarantees must extend to all who work within human rights, including human rights lawyers. It is essential that we protect their activities, as well as their profession, as both make them human rights lawyers.

For

Intigam Aliyev

Human Rights Lawyer, Azerbaijan



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Glossary

Advocacy/human rights work: Any activity intending to promote, protect and implement human rights and fundamental freedoms.

Guarantees: Rules and regulations that summarise and reinforce principles and serve to ensure compliance with obligations.

Human rights defender: Anyone who, individually and in association with others, promotes and seeks to protect and implement human rights and fundamental freedoms at the national and international levels.

Human Rights House Network (HRHN): The community of human rights defenders working in more than 100 independent organisations operating in 16 Human Rights Houses in 13 countries. The mission of HRHN is to protect, empower and support human rights defenders and their organisations.

Human rights lawyers: Both members of lawyers' professional associations and those working in other organisations (institutions) or individually, if their law practice is focussed on promoting and protecting human rights and freedoms.

ILIA: The International Law in Advocacy (ILIA) programme run by HRHN. The ILIA programme is a part of the HRHN's strategic programme for capacity building and knowledge sharing.

Immunities: Rules for certain categories/status of individuals which enable them to not abide by general requirements, or exempt them from certain obligations and responsibilities, and ensure special procedures for them.

Implementation: Putting into effect the rules of international law by means of purposeful organisational and legal activities of states.

International legal standards: Compulsory and recommendatory rules that are accepted at the international level. These standards should apply directly in the national legal systems and help determine the degree of the implementation of human rights and freedoms.

Lawyer: A professional who provides qualified legal assistance to individuals and legal entities, including the protection of their interests and rights in court.

Legal assistance: An umbrella term applied to different kinds of legal services offered by lawyers (jurists) including legal consultations and explanations of legal issues; elaboration of applications, complaints, and other legal documents; representation of clients in courts, state bodies, other organisations, including in governing bodies and before individuals; participation in pre-trial procedure and criminal court as a lawyer and representative of the offended party, civil claimants, civil defendants, etc. In some countries jurists' and lawyers' powers in regard to the kind of legal assistance differs.

Legal assistance for human rights violations: A new concept, which means the right of every person to receive or to provide qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

Executive summary

In recent years, pressure has intensified on lawyers working on human rights or representing individuals claiming their rights were violated. The trend observed in Eastern Europe is particularly worrying as it threatens the well being of the society as a whole, and the functioning of States under the rule of law.

Lawyers carry out a professional defence of human rights. The function deserves protection as the right to legal assistance is a key principle of the right to a fair trial.

In the countries discussed in this report (Republic of Azerbaijan (Azerbaijan), Republic of Belarus (Belarus), Republic of Moldova (Moldova), Russian Federation (Russia), and Ukraine), the daily reality of human rights lawyers is a harsh work atmosphere, in which they face retaliation for their work, in the form of harassment, violation of their rights to private communication with their clients, threats and intimidation, and can ultimately lead to disbarment from their professional organisation or their imprisonment.

The violation of already existing protection for lawyers adds to the deficiency of further protection needed for human rights lawyers.

The Azerbaijani human rights lawyer Intigam Aliyev serves as an example. He is one of the leading lawyers in the country and one of the first to use the European Court of Human Rights following Azerbaijan's accession to the Council

of Europe. Intigam Aliyev received international recognition for his work. He is well-known domestically and embodies justice in the country. He has been punished for his work and was sentenced to seven and a half years in prison. He had previously been excluded from the Bar Association and been the subject of various types of bureaucratic and legal harassment, which was also targeted at the organisation leads, the Azerbaijani Legal Education Society.

As Intigam Aliyev put it himself:

“My activity in the European Court, especially election cases, played an important role in my imprisonment. These activities irritate the government. Our organisation and I were notified about undesirable outcomes of this activity continually.”¹

Aliyev's example is one that not only illustrates the retaliation against human rights lawyers but also the more systematic reprisal against lawyers using international mechanisms, such as the European Court or the United Nations Human Rights Committee, or who invoke international law and standards in national courts.

The Belarusian human rights lawyer Leonid Sudalenko is another illustration of a lawyer who experienced retaliation for his work and reprisals due to the submission of individual complaints to the UN Human Rights Committee.

International legal recognition of the right of individuals to individually, or in association with others, promote and strive for the protection and realisation of human rights and fundamental freedoms exists; in other words, the right to be a human rights defender.

This right ensures that all human rights defenders are able to carry out their work unhindered, and

under the protection of national law, if needed, and includes the work on all aspects of human

¹ Excerpt from Intigam Aliyev's final statement at his trial, Baku, Azerbaijan, April 2015
[http://www.bureau.kz/novosti/sobstvennaya_informaciya/poslednee_slovo_intigama_alieva_v_sude].

rights. Hence, this protection entrenched in the United Nations Declaration on Human Rights Defenders² also covers the work of human rights lawyers and the material and procedural guarantees provided for advocacy and human rights promotion apply to this professional group.

Under this approach, the concept of a human rights defender and the guarantees for human rights work become the general guarantees and should extend to all lawyers who promote and protect human rights in their work.³

These guarantees include both material and procedural guarantees, i.e. the right to be protected effectively under national law in reacting against ... activities and acts, attributable to States that result in violations of human rights and fundamental freedoms.⁴

Alongside the general guarantees, the regulatory framework of the concept of a human rights defender do not annul but, on the contrary, stress the importance of observing the respective national and international standards of professional conduct and ethics.⁵

Introduction of the general guarantees for human rights work therefore aims to adapt the professional standards to the values enshrined in the basic human rights documents. The progressive development and implementation of general and special standards could improve the effectiveness and safety of professional protection and legal assistance for human rights.

The negative trend of increasing risks and threats to the human rights lawyers entails grave consequences: the work of the human rights lawyers ceases to be efficient and safe, the principle of confidentiality is violated, which evolves into negative implication for the right of a client to protection. These consequences will unavoidably result in loss of trust in the human rights instruments, in general, including the international courts and quasi-judicial bodies.

There is a need to secure procedural equality of arms and the right to qualified legal assistance for victims of human rights violations whose complaints are considered at the international level. Appropriate guarantees and immunities for the lawyers representing human rights cases before the international courts and quasi-judicial bodies are not currently enshrined in the professional standards for the lawyers and they are not provided for in the procedures of the international bodies.

Evidence of non-compliance by the respective governments with their international obligations enshrined in the international legal standards of the professional guarantees for the lawyers is of concern because it threatens the right to have legal counsel. Such evidence comes from Intigam Aliyev's case, as well as those of many other human rights lawyers.

When asked about whether additional international protections for human rights lawyers are needed, 70% of the lawyers questioned for this report responded positively and provided the following reasons:

It is necessary to ensure the real competitiveness of a lawyer and the State.

The governments do not hurry to enshrine such guarantees at the national level.

2 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998.

3 Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014), page 37.

4 For example, Article 2 para 1 and 2, Article 9, and Article 12 para 2 and 3 of UN Declaration on Human Rights Defenders (1998) UN Declaration on Human Rights Defenders (1998)

5 Article 11 of the UN Declaration on Human Rights Defenders (1998)

Those who did not approve expressed the following doubts:

What if it decreases the importance of protection at the national level?

In case of extension of the guarantees, they should apply to all the lawyers, not only human rights lawyers.

professional associations of lawyers, and extend to these lawyers the guarantees and immunities for lawyers under international and national laws.

Today, there is double repression. Governments on one hand restrict the enjoyment of human rights for all people and those defending human rights fear more and more severe retaliation. Human rights defenders are also victims of laws criminalising their work. On the other hand, governments use sophisticated methods to harass, intimidate and punish lawyers defending those whose rights were violated.

Victims of repression due to their work, human rights lawyers need greater protection. International organisations must increase their support to such lawyers and take greater measures against retaliation against human rights lawyers.

The report's recommendations aim to increase the level of national and international implementation of the guarantees and immunities already existing which provide for lawyers under international law (special guarantees), and to include proposals to improve the effectiveness and safety of human rights lawyers through the dissemination and widespread use of general guarantees for human rights work.

The recommendations highlight the necessity to supplement the guarantees to ensure the principle of equality of arms before the international courts and quasi-judicial bodies.

Finally, the governments are requested to take measures to eliminate discrimination of victims of human rights violations receiving legal assistance from lawyers who are not members of

I.

Methodology

This report has been initiated by human rights lawyers from Azerbaijan, Belarus, Moldova, Russia, and Ukraine, all of whom are alumni of the International Law in Advocacy programme (ILIA) of the Human Rights House Network (HRHN).

The Human Rights House Network, and the experts at HRHN Secretariat, were the originators of elaboration of the idea and took part in development of the international legal basic concepts aimed at securing the guarantees for human rights work. ILIA is a component of HRHN's strategic programme for capacity building and knowledge sharing. It aims to deepen lawyers' knowledge in the field of human rights and to increase the level of cooperation between lawyers, human rights defenders and organisations of the Human Rights House Network.

From 2013 to 2015, a number of events were conducted, including three conferences of ILIA alumni, participants and experts:

- “Free Legal Aid: Challenges and Implementation Concepts” (February 2014, Veliky Novgorod, Russia);
- “Lawyers: Human Rights Protection and Professional Security Guarantees” (June 2014, Vilnius, Lithuania); and
- “Additional Guarantees and Immunities for Human Rights Lawyers” (February 2015, Chisinau, Moldova).

In addition, a survey of the alumni and experts of ILIA programme on provision of legal assistance to victims of human rights violations was conducted in the participating countries.

The conferences were attended by 131 participants.

In the survey, more than 80 human rights lawyers from Azerbaijan, Belarus, Moldova, Russia, and Ukraine took part. Survey processing was completed by ILIA alumni and the results were presented at the conference “Additional Guarantees and Immunities for Human Rights Lawyers.” Following the discussion, an international analytical group was founded that used the survey results when drafting this report.

1.1. Goals and Objectives

The report is intended to contribute to better understanding of the role of the human rights lawyers and to increase implementation of guarantees for human rights work aimed at provision of legal assistance to victims of human rights violations.

To this end, the following **objectives** have been completed:

- An analysis conducted of the relevant national and international legal standards for the legal profession⁶ and human rights work⁷

6 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990); Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies); Resolution (78) 8 on Legal Aid and Advice adopted by the Committee of Ministers of the Council of Europe on 2 March 1978 and explanatory memorandum; Draft Universal Declaration on the Independence of Justice (Singhvi Declaration) 1980; 7 UN Declaration on Human Rights Defenders (1998); European Union Guidelines on Human Rights Defenders (2004); Declaration of the Council of Europe action to improve the protection of human rights defenders (2008); UN Resolution on the protection of human rights defenders (2013); Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014); documents of the International Bar Association and the International Commission of Jurists, etc.

and the norms regulating the provision of legal assistance for victims of human rights violations⁸ ;

- Systematic problems were identified and revealed in the implementation of special guarantees and standards for the human rights lawyers in national legislation and in practice in Azerbaijan, Belarus, Moldova, Russia, Ukraine, and the reasons for those problems identified;
- Examples were described and analysed that show the escalation of risks and problems caused by the lack of guarantees for the human rights lawyers who, in particular, apply the international legal protection of victims of human rights violations;
- A legal analysis of certain terms and concepts used in the report was conducted; and
- Specific recommendations made to reinforce the guarantees for human rights lawyers.

1.2. Methods

To understand the role of human rights lawyers in human rights work and to study the balance between the general and special guarantees, the report's authors conducted a comparative legal analysis of the related norms for human rights work and those guarantees and immunities that are traditionally assigned to the legal representatives (lawyers).

In the course of this analysis, it was necessary to define new terms and to specify the content of the existing definitions with regard to modern circumstances. In particular, the following terms were examined: Human rights lawyer, Human rights defender, Human rights work, Legal assistance, and Legal assistance in cases of human rights violations .⁹

⁸ Article 9 of the UN Declaration on Human Rights Defenders (1998); Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014); documents of the International Bar Association and the International Commission of Jurists, etc.

⁹ See the Report's annex "Comparative Legal Analysis of Terms Used in the Report"

The following synthesis of these definitions combined the single items and formed terms fitting the goals and objectives of this report. The comparative legal method was used to compare the national legislations of five countries participating in the ILIA programme with the international legal standards. Highlighting certain aspects of implementation of the guarantees and immunities for human rights lawyers, the comparative analysis also helped show the difference between *de jure* and *de facto* and highlighted defects and (or) unequal approach to the lawyers and the members of the bar. The statistic method was applied in the course of obtaining and analysing the survey data and also in the evaluation of other documents used in the report. Finally, the case study method was widely used to illustrate certain provisions of the report with the examples received from the human rights lawyers from Azerbaijan, Belarus, Moldova, Russia, and Ukraine. Members of the Human Rights House Network and the partners of the International Law in Advocacy Programme were guided by the Code of Conduct of the Human Rights House Network.¹⁰

1.3. Sources

The international legal standards¹¹ and the national legislation of the participating countries served as the primary sources used for measuring the States' observance of international obligations in the field of the guarantees for human rights lawyers' work. The report's authors relied on the following documents generating legal obligations for certain States: the Charter of the United

¹⁰ http://humanrightshouse.org/HRHN/Code_of_Conduct/index.htm

¹¹ International legal standards is a composition of the "hard" and "soft" norms of law that are accepted at the international level. Regardless of their ability to generate legal obligations for certain states, the principle of their universality and functions to protect the fundamental human rights and freedoms allow them to serve as a measure, which should apply directly in the national legal systems and help determine the degree of the implementation of human rights and freedoms. Glossary of the ILIA programme of HRHN.

Nations Organisation and the International Bill of Human Rights, the European Convention on Human Rights, and other international covenants containing the provisions related to the right to protection and the obligations of the states to respect and secure human rights.

The documents of the “soft” law¹² were adopted in elaboration of certain treaties. The powers to prepare such recommendations for the purpose of assistance to the member countries in realisation of obligations enshrined in the international covenants derive of Article 13 of the Charter of the United Nations and respective norms of other treaties.

The data derived from the survey conducted by the ILIA alumni and the reports presented by the national and international organisations were used as the secondary sources.

The written analysis prepared by the report’s co-authors, and their speeches at the conference and during open and closed meetings of the HRHN programme, were included in conclusions made by the authors of the joint report.

In all cases, when there was no risk or threat to the participants, the author is referenced.

¹² See: ref. 1 and 2 of this Report.

II.

Introduction

This report is being published with the aim of raising awareness about the growing threats to and persecution of human rights lawyers.

Such situations lead to increasing difficulty for lawyers who work on human rights related issues to work and to provide legal counsel. What is unique about this report is the focus on the limitations put on the work of human rights lawyers resulting from harassment and legal restrictions. The authors believe that the documentation supports a call for review of practices and legislation in the participating countries. The hope is that this awareness will lead the international community to further strengthen standards aimed at protecting lawyers working on human rights or defending victims of human rights violations.

Human rights lawyers and human rights defenders

The term “human rights lawyer” refers to a lawyer who provides legal counsel to victims of human rights violations regardless of the lawyer’s membership in a professional association.

Lawyers constitute a professional group whose work is indissolubly related to human rights protection including implementation of the right to fair trial. The term “human rights defender” is an umbrella term for all those engaged in human rights work including the human rights lawyer. Hence, a human rights lawyer is both a professional practicing law and a human rights defender.

The report is intended to unveil the risks and problems faced by human rights lawyers in providing legal assistance. Data was obtained through consultations and surveys of distance learning alumni and trainees. The participants include lawyers from the above stated countries and experts from HRHN and the Council of Europe. In addition, the report includes detailed analyses of the national legislation, practice, and tendencies in the field of provision of legal assistance to the victims of human rights violations and describes the problems at the regional and international level.

Initiated by human rights lawyers from Azerbaijan, Belarus, Moldova, Russia, and Ukraine, all of whom are alumni of the International Law in Advocacy programme of the Human Rights House Network, this report accumulates the examples of systematic violations in the field of legal profession and, by applying a comparative legal approach, reveals the departure of governments from the international obligations to provide special guarantees for members of the legal profession.

Although this report’s geographic scope is limited to the countries in which HRHN is active, today one can see that pressure and punishment of human rights lawyers is also a reality outside of Eastern European countries. Recently, the Chinese human rights lawyer Xiao Guozhen, a visiting fellow at the National Endowment for Democracy, shared his experience from his country:

The increasing popularity of human rights lawyers, especially among the disgruntled and oppressed, and their rising influence on social media, has scared our leaders to such an extent that they felt it necessary to carry out the current wave of nationwide arrests.¹³

¹³ Xiao Guozhen, “China vs. Its Human Rights Lawyers” (31 July 2015), The New York Times, available at http://www.nytimes.com/2015/08/01/opinion/chinas-vs-its-human-rights-lawyers.html?sm-prod=nytcore-ipad&smid=nytcore-ipad-share&_r=0.

The popularity of human rights lawyers in many countries, such as Intigam Aliyev in Azerbaijan, is due to their role in protecting those suffering of human rights violations. Unlike other human rights defenders, human rights lawyers have a legal responsibility to do so. Furthermore, lawyers have a responsibility to act as a participant of legal procedures¹⁴ or “essential agents of the administration of justice.”¹⁵ Special relations between a lawyer and a client and a set of professional and ethical duties for legal representatives predetermine the list of special duties, guarantees and immunities for the lawyers. These provisions are included in the national legislation of the majority of legal systems. The basic principles securing the proper role of lawyers in the national legal systems have been translated into the international legal regulations.¹⁶ Also, institutes of monitoring the observation of the principles of independence of the lawyers¹⁷ have been introduced.

¹⁴ Due process has become a universally recognised principle of the law. Its Russian translation is Правовые гарантии (or proper process of law). Due process means that the government must secure observation of all the rights established by the national law. In any legal framework this principle may have its title and definition. For example, the principle of proper process of criminal procedure executing (Article 2 of the Criminal Procedure Code of the Republic of Belarus)

¹⁵ Article 12 of the Basic Principles on the Role of Lawyers 1990

¹⁶ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990); Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies); Resolution (78) 8 on Legal Aid and Advice adopted by the Committee of Ministers of the Council of Europe on 2 March 1978 and explanatory memorandum

¹⁷ In 1994, the Commission on Human Rights, in resolution 1994/41 decided to appoint a Special Rapporteur on the independence of judges and lawyers. Like other Special Procedures, this mandate was assumed by the Human Rights Council (General Assembly resolution 60/251), and extended for one year, subject to the review to be undertaken by the Council (Human Rights Council decision 2006/102). In June 2008, the mandate of the Special Rapporteur on the independence of judges and lawyers was subject to review undertaken by the Human Rights Council and extended for a period of three years. In resolution 8/6, the Human Rights Council recalled earlier Commission on Human Rights resolutions, including 1994/41, 1995/36, 2002/37 and 2005/33, and General Assembly resolutions, including 40/32 and 45/166. In resolution 17/2, the Human Rights Council recalled its resolutions 8/6, 12/3, 13/19 and 15/3. The mandate of the Special Rapporteur was most recently extended for another period of three years by Human Rights Council 26/7 <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>

The negative trend that demonstrates the increasing risks and threats to the human rights lawyers entails grave consequences: the work of the human rights lawyers ceases to be efficient and safe, the principle of confidentiality is violated, which evolves into negative implication for the right of a client to protection. These consequences will unavoidably result in loss of trust in the human rights instruments, in general, including the international courts and quasi-judicial bodies.

Furthermore, the problems of implementation of the States' commitments to take measures to enable and observe the legal guarantees for the lawyers' work are directly related to the right to fair trial. Hence, the loss of trust will also affect the judiciary of a country.

In this sense, just like journalists and media workers can be human rights defenders, lawyers are a category of human rights defenders working in their professional capacity. Although their protection under national legislation is not necessarily the same, lawyers and journalists benefit from such protection due to the essential need of their work to guarantee human rights for all.

In a move to strengthen the protection of journalists and media workers, the United Nations Human Rights Council affirmed that States have a responsibility to promote a safe and enabling environment for journalists to perform their work independently and without undue interference. The Council called on States to take various measures, including:

- a) Legislative measures;
- b) Awareness-raising in the judiciary, law enforcement officers and military personnel, as well as journalists and civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists;

- c) Monitoring and reporting of attacks against journalists;
- d) Public condemnation of attacks on journalists; and
- e) Dedicating necessary resources to investigate and prosecute such attacks.¹⁸

The same is true for human rights lawyers. The United Nations established such protection with the concept of human rights defenders in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (hereafter referred to as the Declaration or the Declaration on Human Rights Defenders).¹⁹ The protections under the Declaration are to be extended to the lawyers' work because it is the activities, not the profession, that primarily determine the role of a human rights defender.²⁰

This report is published with the belief that human rights lawyers need more protection to be able to protect victims of human rights violations. Further, it is believed that in the contemporary world where international human rights law has the normative value, there is an opportunity (and, in parallel, the responsibility) to use the international standards and institutes to influence the actions of the state. Thus, lawyers should look beyond the scope of the national legislation and conduct the comparative analysis of its compliance with the international legal standards.

18 Human Rights Council resolution 21/12 on safety of journalists, 9 October 2012, para. 8 (UN Doc: <http://A/HRC/RES/21/12>), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/21/12.

19 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998.

20 Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014), Amicus Curia letter to the ECHR INTIGAM ALIYEV V. AZERBAIJAN (Application No. 68762/14) WRITTEN COMMENTS BY HELSINKI FOUNDATION FOR HUMAN RIGHTS, HUMAN RIGHTS HOUSE FOUNDATION AND FREEDOM NOW, 13 MARCH 2015.

21 Freedom Now and Human Rights House Network, Breaking point in Azerbaijan, Washington, DC and Geneva, May 2015, available at <http://humanrightshouse.org/Articles/20947.html>.

22 Amicus Curia to the Council of Europe's Commissioner for Human Rights in accordance with c Article 36 para 3 of the European Convention on Human Rights and Fundamental Freedoms. Application no. 68762/14, Intigam Aliyev versus Azerbaijan.

Crackdown in Azerbaijan

The belief in an international system protecting human rights lawyers is also at the core of the work of Azerbaijani human rights lawyer, Intigam Aliyev. Aliyev, an award winning lawyer, is President of the Legal Education Society of Azerbaijan, works with the HELP programme of the Council of Europe, and has been a teacher and partner of the ILIA programme since 2009. The Legal Education Society joined the Human Rights House Network as a partner NGO of the Human Rights House Azerbaijan.

The pressure of human rights lawyers in Azerbaijan is documented as part of the greater crackdown on civil society in Azerbaijan.²¹ Aliyev was detained on 8 August 2014 and then arrested on charges of tax evasion, abuse of power, and illegal business. On 22 April 2015, he was sentenced to 7.5 years in prison.

Aliyev is one of the most respected human rights lawyers in Azerbaijan and has been instrumental in promoting human rights and rule of law for more than two decades. Despite being excluded from the Bar Association, Aliyev continued his legitimate work as a lawyer under the auspices of the Legal Education Society. Aliyev became a guru in human rights protection and trained hundreds of lawyers, including those in the ILIA programme.

Since 2001, Aliyev has submitted more than 100 complaints against Azerbaijan to the European Court of Human Rights. The cases involved freedom of expression and association, right to property, and right to free elections. When he was detained he had more than 20 cases in process with the Court, in which he represented more 40 individuals whose complaints were related to violations stemming from the 2010 elections.

In June 2014, shortly before his arrest, Aliyev and Azerbaijani human rights defenders took part in an event at the Parliamentary Assembly of the Council of Europe. The event, held while Azerbaijan held the presidency of the Committee of Ministers of the Council of Europe, aimed to draw attention to detrimental changes to human rights in the country including new registration requirements and obligations for non-governmental operating in Azerbaijan.

The Council of Europe's Commissioner for Human Rights stated that Aliyev's case was part of "a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. ... and provides a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions, including the Council of Europe."²²

Under this approach, the concept of a human rights defender and the guarantees for human rights work become the general guarantees and should extend to all lawyers who promote and protect human rights in their work.²³

These guarantees include both material and procedural guarantees, ie. the right to be protected effectively under national law in reacting against ... activities and acts, attributable to States that result in violations of human rights and fundamental freedoms.²⁴

Alongside with the general guarantees, the regulatory framework of the concept of a human rights defender do not annul but, on the contrary, stress the importance of observing the respective national and international standards of professional conduct and ethics.²⁵

A set of professional and ethical duties for legal representatives predetermine the list of duties, guaranties and immunities for lawyers. These provisions are included in the national legislation of the majority of legal systems. The basic principles securing the proper role of lawyers in the national legal systems have been translated into international legal regulations.²⁶

Also, international bodies for monitoring the global observation of the principles of independence of the lawyers²⁷ have been introduced.

The introduction of the general guarantees for human rights work therefore aims to adapt the professional standards to the values enshrined in the documents outlining basic human rights. The progressive development and implementation of general and special standards could improve the effectiveness and safety of professional protection and legal assistance for human rights.

Some problems are created by noncompliance with international legal obligations undertaken by the States including the right to protection and the implementation of regulations designed to create conditions for lawyers' work, which makes itself felt in various forms such as the absence or excessive regulation of lawyers' activities, or interference with or prosecution for their professional activities.

Other problems appear because current international standards, which regulate the guarantees for the lawyer's activities (in particular, the Basic Principles on the Role of Lawyers²⁸), do not cover the important part of legal profession related to application of advocacy of the legal concept of universality of human rights. Nor does it cover the instruments protecting the most widely recognised rights and freedoms.

23 Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014), page 37.

24 For example, Article 2 para 1 and 2, Article 9, and Article 12 para 2 and 3 of UN Declaration on Human Rights Defenders (1998) UN Declaration on Human Rights Defenders (1998)

25 Article 11 of the UN Declaration on Human Rights Defenders (1998)

24 For example, Article 2 para 1 and 2, Article 9, and Article 12 para 2 and 3 of UN Declaration on Human Rights Defenders (1998) UN Declaration on Human Rights Defenders (1998)

25 Article 11 of the UN Declaration on Human Rights Defenders (1998)

26 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990); Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies); Resolution (78) 8 on Legal Aid and Advice adopted by the Committee of Ministers of the Council of Europe on 2 March 1978 and explanatory memorandum

27 In 1994, the Commission on Human Rights, in resolution 1994/41 decided to appoint a Special Rapporteur on the independence of judges and lawyers. Like other Special Procedures, this mandate was assumed by the Human Rights Council (General Assembly resolution 60/251), and extended for one year, subject to the review to be undertaken by the Council (Human Rights Council decision 2006/102). In June 2008, the mandate of the Special Rapporteur on the independence of judges and lawyers was subject to review undertaken by the Human Rights Council and extended for a period of three years. In resolution 8/6, the Human Rights Council recalled earlier Commission on Human Rights resolutions, including 1994/41, 1995/36, 2002/37 and 2005/33, and General Assembly resolutions, including 40/32 and 45/166. In resolution 17/2, the Human Rights Council recalled its resolutions 8/6, 12/3, 13/19 and 15/3. The mandate of the Special Rapporteur was most recently extended for another period of three years by Human Rights Council 26/7 <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>

28 Basic Principles on the Role of Lawyers 1990

In addition, the risks and challenges related to lawyers' work in the international bodies and the obligations of the States to create conditions for this work are not covered in the documents which regulate the guarantees for the legal profession (lawyers).

The low awareness about the general guarantees for those who promote and protect human rights and the increased risk to those who work with victims of human rights violations can create marginalization and negatively impact the effectiveness of human rights activities of the lawyers.

III.

Human Rights Lawyers

Problems of implementation and lack of *de jure* guarantees and immunities

3.1. Risks for and threats to human rights lawyers

The **Basic Principles on the Role of Lawyers**²⁹ provide for the following:

16. Governments shall ensure that lawyers (a) be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) be able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their function.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

However, in the countries named in this report, there is a tendency to increase apparent risks and threats against human rights lawyers and, in particular, against those who provide legal assistance to certain individuals or groups (political opposition leaders, civil society activists, etc.), working on high-profile cases and representing their clients before the international human rights institutions.

Physical violence

Stanislav Markelov, Russia

Stanislav Markelov was a Russian lawyer, human rights defender, President of the Rule of Law Institute, an employee of the Collective Action Institute, and an anti-fascist. He was known for his engagement in cases related to war crimes, human rights violations, environmental and military issues, and defence of anti-fascists. Markelov was a victim of a high-profile murder committed in Moscow on 19 January 2009. Lawyer Stanislav Markelov and journalist Anastasia Baburova were killed immediately after the lawyer's press conference. According to the court verdict, the murder was committed by neo-Nazis; they wanted to take revenge on the lawyer for his work in litigation to defend anti-fascists.³⁰

Arkady Chaplygin, Russia

Arkady Chaplygin is a lawyer, and Head of a specialised Bar Association, "Prizyvnik" ("Draftee"). Since 2002, the Bar Association has advised young men on draft deferments and draft exemptions, organised legal assistance in obtaining draft deferment or draft exemption lawfully, organised independent medical

²⁹ 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, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

³⁰ https://ru.wikipedia.org/wiki/Убийство_Маркелова_и_Бабуровой

examination for draftees and defended them in court.

In November 2014, Chaplygin was beaten by unidentified persons in his workplace. Chaplygin received a telephone call from anonymous callers who introduced themselves as couriers from a well-known international shipping service. He asked the “couriers” to come up to his office. They insisted on Chaplygin coming down to his car, but the lawyer refused to do that. Then the unknown assailants crashed into his office and started beating Chaplygin. Some people who still remained in the office in the evening frightened them away. Chaplygin’s party members believe that the attack has political implications: the lawyer works on several cases related to the Yekateringof municipal district election and demands that the election results³¹ be cancelled.

Persecution and sanctions for legitimate professional activities, as well as threatening with such prosecutions and sanctions

Alaif Gasanov, Azerbaijan

Alaif Gasanov is one of human rights defender Leyla Yunus’ lawyers. We believe that Yunus has been exposed to politically motivated persecution.

Visiting Yunus in a pre-trial detention centre, Gasanov noticed the signs of physical coercion on her and collected the related facts, which were later publicized in the newspaper titled, *Azadlyg (Freedom)*. Upon that publication, Red Cross representatives arrived at the place of Leyla Yunus’ detention at short notice and, actually, saved her life.

Soon after that, Yunus’s cellmate Nuriya Guseinova filed a complaint with the law-enforcement organs stating that Alaif Gasanov had insulted and defamed her (both these

actions are considered criminal offense in Azerbaijan). As a result, the lawyer was convicted for his Facebook publication.

According to the court’s decision, in his post Alaif Gasanov mentioned that Nuriya Guseinova and another of Yunus’ cellmates (one who had arrived to the centre not long before), smoked a lot creating a deteriorating the situation for Leyla Yunus who suffered from lack of fresh air. Gasanov also wrote that both women spoke highly of the government all the time, in fact, attempting to brainwash the human rights defender. On the grounds of his Facebook post, the *Azadlyg* newspaper published an article without letting Gasanov know and without his approval. Nuriya Guseinova read the article and appealed to the law enforcement organs. It is worth noting that the detention centre administration takes care to ensure that this opposition newspaper does not get to the detainees. Guseinova not only managed to read it but also was able to immediately file a law suit, something that usually does not happen quickly as the mail of those in custody usually takes long months to get somewhere.

On 6 November 2014, the court found Alaif Gasanov guilty of defamation (“dissemination of knowingly false information discrediting honour and dignity of other person or damaging his reputation in public statement or mass media”). Gasanov was sentenced to 240 hours of public service.

Thus, Gasanov was deprived of the opportunity to protect Leyla Yunus, and to continue practicing law for the term of his serving the sentence. In addition, on 3 July 2015, when his sentence was nearly over, Presidium of the Bar Association expelled Gasanov from the Bar in breach of the procedure, therefore, depriving him of the right to practice in the legal profession. The interesting point is that the reason for expulsion was the court’s

31 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13- 15 February 2015, Chisinau, Moldova)

decision of 6 November 2014. Gasanov was neither invited to take part in the discussion of his case nor was he even informed about it. He learned about the Presidium's decision via mass media.³²

Anna Aladova, Moldova

Anna Aladova is a lawyer working in the Regional Office of the National Council for State-Guaranteed Legal Aid (NCSGLA). She represents victims of human rights violations; she has also represented several clients before the ECtHR.

In January 2012, Aladova learned that she was accused of fraud: she had allegedly provided false information for the Regional Office of the NCSGLA referring to the types of help she can provide as a lawyer. Having learned about the intention of the prosecutor to initiate a criminal case against her, Aladova went to his office. In a private conversation that she was secretly recording, he confirmed that the reasons for which she was being persecuted were different from those that he had stated in the lawsuit. He also mentioned several times that she was "talking too much".

Two weeks before that day, on 4 January 2012, a police officer from the Criminal Investigation Department threatened Anna Aladova. He shouted at her aggressively, said that she talked too much, and threatened to deprive her of her law license. A few weeks before that, Aladova had filed a complaint regarding the refusal by the police to disclose the whereabouts of one of her clients who had been transported from the prison to an unknown location. According to the information received from the human rights defender Anna Aladova, it was that very complaint that was the actual reason for the threats against her.³³

Murad Musayev, Russia

The Investigative Committee of the Russian Federation initiated two criminal cases against the lawyer Murad Musayev on suspicion of witness tampering and interfering with the court's work in order to impede the course of justice. The lawyer believes that the Investigative Committee wants to use these charges to remove him from the several high-profile cases in which he is engaged.³⁴

Prosecution for statements made in good faith in the course of professional duties.

Khalid Baghirov, Azerbaijan

On 10 December, 2014, the Presidium of the Azerbaijan Bar Association suspended the work of the lawyer Khalid Baghirov, having accused him of violating professional ethics. The charges stemmed from the lawyer's speech for the defence of Ilgar Mammadov, the leader of the REAL opposition movement, in which he said: "Issuance of this sentence is evidence of the complete absence of fair justice in our country". In addition to the suspension of Baghirov's work, the Bar decided to apply to the court for the complete cessation of the lawyer's powers. The lawyer believes that the decision of the Bar was unreasonable, biased and aimed to punish him for his professional work and to silence him. As a lawyer, Baghirov had been working on the cases of the majority of the political prisoners, including the human rights defenders Arif Yunus and Leyla Yunus, and was about to proceed to the defence of Khadija Ismailova, a journalist working for the Azerbaijani service of Radio Free Europe/Radio Liberty (RFE/RL), who was arrested on December 5.³⁵

32 Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova)

33 Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova)

34 <http://www.gazeta.ru/social/2013/11/07/5742077.shtml>

35 Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova).

Oleg Aheyeu, Belarus

Oleg Aheyeu is a former defence lawyer and member of the Minsk City Bar Association. In December 2010, Oleg Aheyeu took on the defence of the former presidential candidate Ales Mikhalevich, who was arrested on the day following the 2010 Presidential election in Belarus and accused of organising the riots.

The ‘riot’ was the several thousand strong rally protesting the results of the presidential elections according to the authorities. The lawyers defending the rally participants were not allowed to visit their defendants in the KGB detention facility. Since the appeals against those violations proved futile, the lawyers reported that fact to the media.

On 5 January 2011, following one of the lawyer’s interviews about the detention conditions in the KGB’s jail, the Ministry of Justice issued an improvement notice offering Oleg Aheyeu to take measures “in order to prevent the facts of misrepresentation of information”. Then the KGB initiated an audit of all lawyer’s documentation. In the course of that inspection, the KGB officers attempted to seizure the lawyer’s business documents. After that, the Ministry of Justice initiated an audit that resulted in the decision of the Ministry of Justice, dated 14 February 2011, to terminate his lawyer’s license.

In August 2011, after Aheyeu filed a complaint with the court against that decision, the KGB initiated a criminal investigation of him. He was indicted on Section 2, Article 380 of the Criminal Code of Belarus (Forgery). On 11 September 2012, the verdict entered into force which, convicted Oleg Aheyeu of forging documents and sentenced him to a pay a fine.³⁶

Identification with clients

Working on the defence in “political” or other high-profile cases, lawyers often face a biased attitude towards them and their activities not only from the law enforcement agencies and courts, but also from the heads of the bar associations.

Belarus

After the 2010 presidential election in Belarus, the lawyers defending the presidential candidates and members of the events of 19 December 2010 (the peaceful assembly, qualified as “riots” by the authorities) were subjected to inspections; some of them were deprived of their lawyer’s license or had problems during the unscheduled qualification assessment of lawyers announced by the Ministry of Justice, or were forced to leave the bar without waiting for the possible claims against them or deprivation of the lawyer’s status; some of the lawyers were removed from their positions in the bar associations”.³⁷

Russia

“The media accused the lawyers from the AGORA human rights group of protecting activists and claimed that the lawyers should also be viewed as activists.”

Ukraine

“The client-lawyer identification is quite common, especially in the district courts. The lawyers, who actively protect their clients including filing complaints against action or inaction of the investigation and prosecution, can often hear from the prosecutors and judges that they are helping criminals. As a result, the police threaten to apply administrative fines and to “find a way to influence” lawyers. The judges told the lawyers not to file appeals or

36 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13- 15 February 2015, Chisinau, Moldova).

37 Analytical review G-3 (2011) “Situation of Lawyers in Belarus after Presidential Election of 19 December 2010”, Committee on International Control over the Human Rights Situation in Belarus: [http://hrwatch-by.org/sites/default/files/IOM_Analytical_Review_G-3_\(2011\)_RUS.pdf](http://hrwatch-by.org/sites/default/files/IOM_Analytical_Review_G-3_(2011)_RUS.pdf)

cassation appeals and warned them that that would “upset the relations”³⁸

Elchin Namazov, Azerbaijan

“In September 2011, the lawyer Elchin Namazov was expelled from the Bar based on the court decision. Namazov was persecuted for the protection of the opposition activists and protesters who participated in the rally on 2 April 2011. Over the past few years, a number of lawyers, engaged in the protection of journalists and opposition political activists, have been expelled from the Bar on the basis of various complaints. The list includes Arzu Aliyev, Hazi Mammadov, Akif Mammadov, Namizad Safarov, Latifa Aliyeva and others.”³⁹

the human rights defender, these actions were considered as part of a campaign aimed at intimidating Sudalenko because of his human rights activities.⁴¹

Persecution for cooperation with international organisations

Leonid Sudalenko, Belarus

Leonid Sudalenko is a Belarusian human rights defender and lawyer, who actively helps victims of human rights violations file individual complaints to the UN Human Rights Committee. Soon after Sudalenko helped Olga Grunova submit her complaint related to refusal by Belarusian authorities to disclose the place of burial of her son who had been sentenced to death and executed on 22 October 2014⁴⁰, he began to receive threats against his children. His request to investigate this fact was turned down.

On 8 April 2015, the police searched his apartment and office explaining that pornography had allegedly been sent from his e-mail. Eight computers were taken away. In the call of 60 organisations of the Human Rights House Network to stop prosecution of

38 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

39 Report on the Situation of Lawyers in Azerbaijan, prepared by An-nagi Hajibeyli as part of a project implemented by the Legal Education Society NGO, with the support of the Human Rights House (Oslo, Norway).

40 For more details see <http://humanrightshouse.org/Articles/20665.html>.

41 <http://humanrightshouse.org/Articles/20911.html>

3.2. Problems of implementation of guarantees and immunities enshrined in international law and national legislation

The Basic Principles on the Role of Lawyers focus largely on the protection of the right to a fair trial and establish the special guarantees for lawyers engaged in the protection of this right in criminal proceedings.⁴² A review of the European countries' practice, including the states presented in this report, shows that the right and obligation to represent clients in courts in criminal cases is, as a rule, enjoyed and implemented by lawyers who have received the formal status under the national law and are members of the bar associations.⁴³ Therefore, governments traditionally perceive the rules enshrined in the Basic Principles as guarantees applying to this narrow category of lawyers; these rules are largely implemented in the national legislation systems through the laws regulating the legal profession. However, the current situation analysis based upon survey results and proceedings of the conferences and workgroups of ILIA Programme alumni, participants, and experts reveals serious problems in implementation of these guarantees in practice.

3.2.1. Interference with lawyers' access to clients

Basic Principles on the Role of Lawyers⁴⁴

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

Recommendation on the Freedom of Exercise of the Profession of Lawyer

Principle I

General principles on the freedom of exercise of the profession of lawyer⁴⁵

5. Lawyers should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.

42 This is primarily supported by the fact that the Basic Principles were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August - 7 September 1990). Besides, the Preamble to the Basic Principles refers to the basic international instruments in terms of ensuring the right to a fair trial and the rights of the accused in criminal proceedings. Finally, the Basic Principles set forth the guarantees of all persons' access to a lawyer's assistance to protect and establish their rights and to defend them in all stages of criminal proceedings (Principle I), and the special safeguards in criminal justice matters (Principles 5 - 8).

43 The Profession of Lawyer, a project report prepared by the Working Group on Professional Judicial Systems as part of the project Eastern Partnership - Enhancing Judicial Reform in the Eastern Partnership Countries: http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/ENG%20March%20Report%20Lawyers.pdf

44 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

45 Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

The laws on the bar and the legal profession in the countries surveyed recognise the right of lawyers to represent their clients before courts and other public authorities, before legal entities and individuals, and to communicate freely with their clients, including detainees and prisoners.⁴⁶

The Codes of Criminal Procedure provide for the admission of a lawyer to the defence of the suspect or the accused from the earliest stage of the proceedings, and for the right of such persons to have a meeting with a lawyer in private and in confidence, without limits on the number and time of such meetings, as well as for the corresponding right of the defender.⁴⁷ The national legislation imposes on the state the obligation to create the appropriate conditions and assist lawyers in the implementation of their professional duty.⁴⁸ However, despite the legislative enshrinement of these guarantees, the majority of the respondents surveyed (49 out of 80) indicated that, in practice, a lawyer's access to the client is not ensured. This primarily refers to the access to defendants in custody (detainees in the police facilities and detention centres, prisoners in penal colonies, prisons and other penitentiaries).

In particular, the lawyers have identified the following problems

46 Article 15, Law on the Bar and Legal Profession of the Azerbaijan Republic, 28 December 1999, No. 783-IF; Article 17, Law on the Bar and Legal Profession in the Republic of Belarus, 30 December 2011, No. 334-3; Article 45,

Law on the Bar of the Republic of Moldova, No. 1260, 19 July 2002; Article 6, Federal Law on the Bar and Legal Profession in the Russian Federation, 31 May 2002, No. 63-ФЗ (as amended on 02 July 2013); Article 20, Law the Bar and Legal Profession, Ukraine.

47 Articles 90.7.8, 91.5.8, 92.4., 92.9.2, Criminal Procedure Code of Azerbaijan; Articles 41, 43, 48, Code of Criminal Procedure of Belarus; Articles 64, 66, 68, Code of Criminal Procedure of Moldova; Articles 46, 47, 49, 53, Code of Criminal Procedure of the Russian Federation; Articles 42, 46, Code of Criminal Procedure of Ukraine.

48 Article 7, Law on the Bar and Legal Profession of the Azerbaijan Republic, 28 December 1999, No. 783-IF; Article 37, Law on the Bar and Legal Profession in the Republic of Belarus, 30 December 2011, No. 334-3; Article 57, Law on the Bar of the Republic of Moldova, No. 1260, 19 July 2002; Article 3, Federal Law on the Bar and Legal Profession in the Russian Federation, 31 May 2002, No. 63-ФЗ (as amended on 02 July 2013); Article 5, Law the Bar and Legal Profession, Ukraine.

Manipulating the procedure to delay lawyer's admission to defence

Azerbaijan

“...The practice is as follows: a person is summoned to appear as a witness; after the testimony, the person is treated as a suspected offender and then charged. In most cases, lawyers do not participate in this process, as it takes quite a lot of time to sign a contract with a client, to obtain a relevant warrant to be able to defend the client, and a relevant permission from the investigating authority. Thus, the suspect or the accused is deprived of the right to defence for all this while. Moreover, in sensitive cases, charges will be filed against a client on weekends (Saturday, Sunday or public holidays). Law offices that issue warrants do not work on these days. Therefore, lawyers cannot sign a contract with their client and receive the warrant and, consequently, cannot defend their client.⁴⁹

Extracting confessions

Lawyers are delayed or denied admission to detainees or prisoners, especially in high profile cases. Or, there are violations, other than procedural interrogations. Or, operational conversations are conducted and torture and other forms of ill-treatment are applied to extract confessions.

Belarus

“The events of 19 December⁵⁰ showed that the lawyers could not visit their clients in the KGB detention centre for a long time (I personally took nine attempts), although the Code of Criminal Procedure and other laws provide for the immediate and free access.”

49 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

50 On 19 December 2010, in Minsk, after Belarus' presidential election, a several thousand strong rally protested against the election results. Hundreds of people were arrested for their participation in the unsanctioned rally; dozens more, including seven of the former presidential candidates, were arrested on charges of organising and participating in the riots and kept in the KGB detention centre, where their lawyers were not admitted on the pretext of unavailability of vacant offices for their work.

Russia

“They would not let me visit the defendant in the temporary detention centre in Kizlyar, the Republic of Dagestan. I started calling around. I called the national prosecutor, and the municipal prosecutor. I sent telegrams to the MIA⁵¹ and to the PMC.⁵² They let me in the next day. He had been beaten, and that was the actual reason why they had not let me visit him.”

Russia

“In the pre-trial detention centre, in Makhachkala, they have the so called “D” block where they keep defendants who have been charged under “high-profile” articles such as preparation of a terrorist attack, participation in illegal armed groups. Lawyers cannot get in this special block for months.”⁵³

Putting pressure on people in detention facilities or prisons in order to make them waive the right to assistance

Moldova

“In some cases, the investigator, hurrying to finish the case, imposes on a certain lawyer on the defendant, or offers the defendant to give up a lawyer, promising to “intercede” for the minimum sentence.”

Belarus

“In 2014, I tried to visit the client, who was reported to be ill-treated, in the penal colony. The head of the penal colony denied me access to the client, saying that he did not know me. I started demanding a meeting with the convict, and sometime later, they brought me his “handwritten statement” according to which he did not need my services and refused to meet me. It was obvious that he had written that statement under pressure. I asked for the client to express his will in my presence, but

the head of the penal colony refused to satisfy my request.”

Russia

“In case of appealing against the illegal actions (inaction) of the penal colony administration a client has to waive the right to receive his zealous lawyer’s services (in writing). It is obvious that it is the result of pressure on a client who is deprived of his rights. The administration puts pressure through the prisoners who provide unspoken assistance. In addition, the administration puts the lawyer on the black list, which impedes personal meetings with a client in the penal colony.”⁵⁴

To access detention facilities and prisons lawyers are required to provide the investigator’s approval or other documents not mentioned in the national legislation.

Moldova

“In the temporary detention facility of the National Anticorruption Centre of Moldova, lawyers cannot visit their clients without the permission of the prosecutor or criminal prosecution officer.”

Russia

“For example, on 5 June 2014, Anna Sharogradskaya, the head of the Regional Press Institute, was detained at the Sheremetyevo Airport in Moscow. Her lawyer was not allowed to see her on the grounds that he did not have an international passport and a ticket, although the Federal Law on the Bar and Legal Profession in the Russian Federation does not provide for the submission of other documents, except for the warrant of representation and lawyer’s certificate.”

Russia

“In Irkutsk, lawyers are illegally required to go through voluntary but, in practice, compulsory fingerprinting to be allowed to meet a client.

51 The Ministry of Internal Affairs.

52 The Public Monitoring Commission.

53 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

54 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

To be admitted to the court hearing or investigative activities and to meet a client a lawyer needs to provide the investigators' written approval and the documents other than the lawyer's certificate.”^{55 56}

The absence of the appropriate conditions for meetings with lawyers in detention centres and prisons

Russia

“A queue in a pre-trial detention centre [in Moscow-author's note] is a common practice. If you have scheduled a visit to a detention centre, you should not plan any other work for this day, as you will spend the whole day there. Sometimes I spent the whole day there in vain and was not allowed to see the client” (an extract from the report prepared by the Interregional Association of Human Rights Organisations “AGORA”.⁵⁷

Russia

“The prison administration may deny a meeting with the convict on the grounds that there are no vacant seats in the office for meetings with lawyers, or the head of the prison is absent and cannot authorise the lawyer's meeting with the client, etc.”⁵⁸

Time limits on access to detention facilities and prisons

Belarus and Moldova

“Lawyers may visit temporary detention centres, pre-trial detention centres, penal colonies and prisons only on weekdays from

9.00 to 17.00, which makes it impossible to have a meeting with the client and to provide legal assistance if it is needed at any other time.”⁵⁹

As a result of such impediments in access to clients, lawyers lack an opportunity to provide necessary qualified legal assistance to their clients - timely, freely and in the proper amount - which actually entails a violation of the right to access to justice that implies access to a detainee, an opportunity to present the evidence essential to the case, the principle of equality of arms, requirements to the judicial procedures, etc.

These problems are caused by:

- Non-compliance by the states with their obligations to ensure timely access to legal assistance provided by lawyers, in particular, for people in detention facilities and prisons;
- Impunity of public officials in cases of impeding lawyers' access to clients; and
- Passivity of the lawyers' professional associations in cases of violations of the guarantee for unimpeded lawyers' access to a client.⁶⁰

55 Resolution of the Conference of the Bar Association of Irkutsk Region “On Inadmissibility of Violations of the Irkutsk Region lawyers' Professional Rights” of 28 March 2014 r. // <http://www.advpalata-irk.ru/?module=news&act=read&id=244>.

56 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

57 The report on the study on impeding professional activities of lawyers in Russia conducted by the AGORA association and RosU-znik project, 13 September 2013.

58 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

59 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

60 The report on the study on impeding professional activities of lawyers in Russia conducted by the AGORA association and RosU-znik project (2013) stated: “The numerous cases of non-admission of lawyers to the police departments and detention facilities deprive lawyers of the opportunities to exercise their profession, and thus deprive their clients of defence. Neither the prosecutors, nor the superiors or the bar chambers address these facts, thus legalizing such practice and de facto devaluing the legal profession.”

3.2.2. Problems in the field of free legal assistance

Basic Principles on the Role of Lawyers ⁶¹

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

Recommendation on the Freedom of Exercise of the Profession of Lawyer ⁶²

Principle IV

Access for all persons to lawyers

2. Lawyers should be encouraged to provide legal services to persons in an economically weak position.

3. Governments of member States should, where appropriate, ensure effective access to justice, ensure that effective legal services are available to persons in an economically weak position, in particular to persons deprived of their liberty.

4. Lawyers' duties towards their clients should not be affected by the fact that fees are paid wholly or in part from by public funds.

In regard to criminal proceedings, the legislation of the countries surveyed applies the model of free legal assistance subsidised by the state: the state assigns lawyers by providing legal services of individual lawyers or the bar associations and then pays for the services provided. The national legislation enshrines⁶³ the right to a State-

appointed lawyer and, formally, implements it. The rights and obligations of a state-appointed lawyer do not differ from the rights and obligations of a lawyer contracted by a client. However, almost a half of the respondents chose the negative answer responding to the question: "Is the independence of the state-appointed lawyers ensured in your country?"⁶⁴

The survey and the discussion at the ILIA programme's conference "Free Legal Assistance: Challenges and Forms of Implementation" (February 2014, Veliky Novgorod, Russia) revealed the following problems in this area:

Inadequate remuneration for state-appointed lawyers' services resulting in lawyers' disinterest and inefficient work

Azerbaijan

"The remuneration paid for legal assistance at public expense is negligible; therefore this institution plays no essential part in protecting human rights and freedoms".⁶⁵

Belarus

"The extremely low rates for the state-appointed lawyers make their help very inefficient. In these cases lawyers simply go through the motions during the pre-trial hearing and in court."

Russia

"Financially, a state-appointed lawyer is extremely dependent on the government and is forced to take on as many cases as possible, so that to be able to earn a payment comparable to a contract lawyer's remuneration."

61 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

62 Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

63 Article 193.2, Criminal Procedure Code of Azerbaijan; Article 46, Code of Criminal Procedure of Belarus; Article 70, Code of Criminal Procedure of Moldova; Articles 50, Code of Criminal Procedure of the Russian Federation; Article 49, Code of Criminal Procedure of Ukraine.

64 Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova)

65 Report on the Situation of Lawyers in Azerbaijan, prepared by An-nagi Hajibeyli as part of a project implemented by the Legal Education Society NGO, with the support of the Human Rights House (Oslo, Norway).

Courts and other law enforcement agencies practise appointing ‘convenient’ lawyers of their choice, who fail to implement active protection of client’s interests (“puppet lawyers”)

Russia

“75% of lawyers used to work in the law enforcement and government agencies; they know the specifics of investigators’ and prosecutors’ work, and often they still liaise closely with the state system, in which they have recently worked. Due to these close contacts, investigators tend to appoint their former colleagues as defence lawyers, so that to avoid much resistance on the part of the defence in a criminal case.”

Moldova

“When a criminal defence lawyer is appointed by the state, the lawyer first meets the client (who is not yet detained or arrested) in the office of the prosecutor or the criminal prosecution officer. This makes it possible for the prosecuting authorities to be the first who contact with the person in need of legal assistance and to offer their acquaintance as a lawyer.

The reasons for these problems are as follows:

- Failure to fulfil the state’s positive obligation to legislate a system of providing free legal assistance enabling effectiveness of such assistance.
- Lack of effective barriers, both in the legislation and in its application that would prevent pre-trial investigation bodies and courts from appointing certain defender.

3.2.3. Breach of the confidentiality principle

Basic Principles on the Role of Lawyers ⁶⁶

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

22. Governments shall recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Recommendations on the Freedom of Exercise of the Profession of Lawyer ⁶⁷

Principle I

General principles on the freedom of exercise of the profession of lawyer

5. Lawyers should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.

6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the Rule of Law.

⁶⁶ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc.A/CONF.144/28/Rev.1 at 118 (1990)

⁶⁷ Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers’ Deputies)

The principle of confidentiality has also been further developed in the documents of the international non-governmental lawyers' organisations.⁶⁸

The confidentiality of client-lawyer communication is a lawyer's professional obligation and, at the same time, the fundamental guarantee enabling a lawyer to provide effective defence. The principle of confidentiality enables the client to trust the lawyer; otherwise, the defence cannot be implemented properly.

A lawyer cannot disclose information entrusted to him/her by a client, and a third party, in particular, the state represented by law enforcement agencies, cannot use information that was entrusted to a lawyer by a client as part of the client-lawyer communication. Thus, the client-lawyer privilege is a guarantee for a client.

Azerbaijan, Belarus, Moldova, Russia and Ukraine have enshrined the principle of confidentiality of the client-lawyer communication and privilege in their legislation⁶⁹. In particular, each of these states prohibits questioning lawyers as witnesses about the information that they have learned while providing legal assistance. Belarus also prohibits questioning trainees, assistants, and other employees in lawyers' formations⁷⁰, and Moldova prohibits questioning employees of a lawyer's offices.⁷¹

68 Standards for the Independence of the Legal Profession, adopted by the IBA on 7 September 1990 in New York. 13. Lawyers shall have all such other facilities and privileges as are necessary to fulfil their professional responsibilities effectively, including: a) confidentiality of the lawyer-client relationship, including protection of the lawyer's files and documents from seizure or inspection and protection from interception of the lawyer's electronic communications

69 for example, Article 89.9, Code of Execution of Punishments of the Azerbaijan Republic; Section III, Article 7, Law on the Bar and Legal Profession of the Azerbaijan Republic; Article 25, Law on Incarceration Procedure and Conditions; Sections 3, 4, 5, Law on the Bar and Legal Profession in the Republic of Belarus; Article 52, Law on the Bar of the Republic of Moldova; Section 4, Article 89, Penal Code of the Russian Federation; Article 8, Federal Law on the Bar and Legal Profession in the Russian Federation; Section 3, Article 110, Penal Code of Ukraine; Article 22, Law on the Bar and Legal Profession, Ukraine

70 Para 3, Section 2, Article 60, Code of Criminal Procedure of Belarus

71 Para 2, Section 3, Article 90, Code of Criminal Procedure of Moldova

However, the majority of the respondents noted⁷² that the principle of confidentiality of client-lawyer communication is often not respected de facto. The manifestations of this problem are as follows:

Lack of opportunities for confidential client-lawyer consultations.

For example, in detention, law enforcement officers provide no opportunity for a client-lawyer conversation in private, thus failing to respect the principle of confidentiality. In penitentiaries, even when the premises are equipped with CCTV cameras, unauthorised persons are often present at the meetings that should be confidential. Quite frequently, detention centres and prisons do not provide a vacant room for lawyers' communication with detainees or prisoners. Quite often lawyers can only communicate with their clients through a glass wall and on the phone in the common visiting room. There are no proper conditions in courts for confidential communication between detainees and their lawyers.

Ukraine

"A lawyer came to a local police precinct to study documents of criminal investigation. The investigator said that he had a court order for the detention of the lawyer's client. During document processing, the police began to force the lawyer out of the precinct not allowing her to confidentially talk to the client."

• Besides the majority of lawyers in the countries surveyed believe that their conversations with their clients on a mobile phone are often monitored unlawfully.

72 Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova)

Belarus

“When reading the case file, I found a transcript of the client-lawyer telephone conversations. Meanwhile, no claims had been filed as regards the legality of the lawyer’s work.”⁷³

- There is a possibility for public officers to review lawyers’ documents or other information is enshrined legislatively (for example, during audits by supervisory bodies⁷⁴) or practised de facto (in penitentiaries, during interrogations, searches, and investigative operations).

In each of the countries surveyed, cases have been registered when lawyers were questioned as witnesses and excluded from the court and investigative proceedings on this basis. For example, in Azerbaijan in 2014, during the criminal proceedings against human rights defenders Leyla Yunus, Intigam Aliyev⁷⁵ and Rasul Jafarov, their “undesirable” lawyers were interrogated as witnesses and then excluded from the defence.

Cases are wide-spread when documents, that could contain client-lawyer privileged information, were reviewed and seized; lawyers’ correspondence, including client-lawyer e-mails, were perused and seized; illegal searches were conducted in lawyers’ and their family members’ offices, homes and cars; and, investigative operations included monitoring and recording of client-lawyer conversations. Lawyers may still be screened, including their belongings and documents, if they are willing to pass into closed penal institutions or in other cases. In prisons, all client-lawyer correspondence will be opened.

73 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

74 For example, Article 38, Law on the Bar and Legal Profession in the Republic of Belarus

75 Such measures were taken against four of the five lawyers who defended Intigam Aliyev

Azerbaijan, Moldova

“The principle of confidentiality is violated depending on the nature of the case investigated.”

Moldova

“Sometimes they organise “a raid” against an unwanted private lawyer; then they initiate criminal proceedings and obtain access to the lawyer’s case files; then they come to the lawyer’s clients and try to put them against their lawyer, using threats and bribery.”

Russia

“In the pre-trial detention centre in Makhachkala, Dagestan, a lawyer, who has a meeting with a defendant in the special “D” block, will be frisked from head to toe, even made to take off the shoes and scanned as at the airport. The same head-to-toe search will be done after the meeting. They will look through all the lawyers’ records and documents. They just make it impossible for the lawyer to communicate normally with the client who is kept in that special “D” block.”

Belarus

“There is a problem in penitentiaries when it comes to the exchange of the procedural documents between a lawyer and a client. Thus, a lawyer is not permitted to pass a complaint or an application to be signed and further submitted directly and confidentially to the client. Before the complaint or application is filed, half of the prison’s staff could have read it. Quite often, the document brought by a lawyer to a client will be given to the client only a few days later, having undergone the bureaucratic procedure. Besides, as far as I know, the perusal of the correspondence between detainees or prisoners and their lawyers is not excluded.”⁷⁶

- In contrast with the legislation of Ukraine⁷⁷, the laws of Azerbaijan, Belarus, Moldova

76 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

77 Article 22, Law on the Bar and Legal Profession, Ukraine

and Russia⁷⁸ provide for the client-lawyer privilege applying only to lawyers but not to other members of legal profession. In Ukraine, the client-lawyer privilege applies also to any information that has become known to a lawyer's assistant, trainee, or any person contracted by a lawyer. Thus, the legislation of the majority of the countries surveyed fails to require lawyers' assistants, trainees and employees to keep confidential the information that has become known to them in connection with their professional duties while only the law of Belarus and Moldova enshrines the prohibition to interrogate these persons as witnesses. Obviously, this approach indicates that the countries fail to ensure properly the principle of confidentiality of the client-lawyer communication.

- There is a problem of a too narrow interpretation of the client-lawyer privilege in Belarus' legislation. For this reason, not all of a client's information, obtained by a lawyer in connection with the provision of legal assistance, is protected.

For example, in Belarus, the client-lawyer privilege does not extend to the fact of client-lawyer communication, only to its contents. Moreover, the law protects information about the circumstances of a crime, received from a client, only if a lawyer defends the rights, freedoms and interests of the client in a criminal case.⁷⁹

That is, if a lawyer has just advised a client on a criminal case, but has taken no part in the criminal proceedings as a defender, the client-lawyer privilege, as specified by the law,

fails to protect the fact and the essence of the consultation provided by the lawyer. Obviously, this approach can result in abuses.

Belarus

“In 2013, the KGB officers summoned a lawyer, who worked in the legal aid bureau of the Gomel Regional Bar Association, for questioning (having warned him about the criminal responsibility for refusal to testify and giving false evidence) and questioned him about the issues that the lawyer had discussed with his client on the eve of the interrogation. They disregarded the references to the client-lawyer privilege since the legal assistance contract was at the stage of signing, that is, it had not been executed in writing by that time. That fact allowed claiming formally that the client-lawyer privilege did not apply to the consultations provided by the lawyer to the client.”⁸⁰

The reasons for these problems are as follows:

- Non-compliance by the states with their positive obligations to ensure the principle of confidentiality of client-lawyer communication; and
- Lack of responsibility for violation of the principle of confidentiality of the client-lawyer communication and the client-lawyer privilege.

⁷⁸ Article 17, Law on the Bar and Legal Profession of the Azerbaijan Republic, 28 December 1999, No. 783-ІГ; Article 1, Law on the Bar and Legal Profession in the Republic of Belarus, 30 December 2011, No. 334-3; Article 55, Law on the Bar of the Republic of Moldova, No. 1260, 19 July 2002; Article 8, Federal Law on the Bar and Legal Profession in the Russian Federation, 31 May 2002, No. 63-Ф3 (as amended on 02 July 2013)

⁷⁹ According to Article 1 of the Law on the Bar and Legal Profession in the Republic of Belarus, client-lawyer privileged information includes information about the matters in connection with which the client applied for legal aid; the essence of the consultations, explanations, references received by the client from a lawyer; information about the client's private life; information about the circumstances of the crime received from the client in a criminal case in which the lawyer has protected the rights, freedoms and interests of the client; information constituting the client's trade secret

⁸⁰ Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

3.2.4. Interference with lawyers' access to documents and case files

Basic Principles on the Role of Lawyers⁸¹

21. It is the duty of the competent authorities to ensure lawyers' access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Recommendations on the Freedom of Exercise of the Profession of Lawyer⁸²

Principle I

General principles on the freedom of exercise of the profession of lawyer

7. Lawyers should not be refused access to a court before which they are qualified to appear and should have access to all relevant files when defending the rights and interests of their clients in accordance with their professional standards.

The national legislation of each of the countries surveyed enshrines the right of a lawyer to independently collect and present information about the case circumstances and to study the criminal case file on the certain procedural stage.⁸³

81 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

82 Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

83 For example, Section II, Article 15, Law on the Bar and Legal Profession of the Azerbaijan Republic; Article 284, Criminal Procedure Code of Azerbaijan; Para 5, II, Section 1, Article 48, Code of Criminal Procedure of Belarus; Article 17, Law on the Bar and Legal Profession in the Republic of Belarus; Para 10, Section 1, Article 68, Code of Criminal Procedure of Belarus; Para (c), Section 1, Article 53, Law on the Bar of the Republic of Moldova; Para 4, 9, 10, Section 1, Article 68, Code of Criminal Procedure of Moldova; Para 3, Section 3, Article 6, Federal Law on the Bar and Legal Profession in the Russian Federation, 31 May 2002, No. 63-ФЗ (as amended on 02 July 2013); Article 217, Code of Criminal Procedure of the Russian Federation; Para 3, Section 1, Article 20, Law on the Bar and Legal Profession in Ukraine; Article 290, Code of Criminal Procedure of Ukraine

However, the following problems have been identified in the practical implementation of this right:

- The national law fails to regulate the disclosure of restricted information (for example, information protected by the physician-patient privilege, banking secrecy, investigation materials, etc.) to lawyers. This deprives a lawyer, working on a case, of the possibility to obtain and use this information, which reduces the effectiveness of the legal assistance provided.

Belarus

“The legislation fails to provide for the disclosure of restricted information upon a lawyer's request. While working on a case, lawyers cannot obtain such information on their own, but can only receive it at the request of the law enforcement authorities or the court. It depends on the discretion of these bodies whether to forward such a request.”

Moldova

“In Moldova, a lawyer has a limited access to information related to serious human rights violations.”

Belarus

“Lawyers face problems in accessing information on their clients' cases that have been investigated. During the criminal proceedings, the so-called ‘operational case files’ (investigation records) are only available for review by the prosecution and the court. Full information on the investigation operations is not available to lawyers. The lawyer cannot verify whether the ‘operational case file’ does actually contain proofs of the client's guilt. However, courts often bring in a verdict of guilty on the basis of such case files.”⁸⁴

84 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

- Quite often lawyers' requests are ignored.

Belarus

“Many individuals and organisations simply do not respond to lawyers' requests, because no responsibility/repercussions for ignoring them have been established.”

Russia

“The right to a lawyer's inquiry is declarative because responsibility for non-provision of the requested information is not enshrined in the Russian legislation.”⁸⁵

Therefore, the principle of equality of arms is violated, and the right to effective legal assistance and to access to justice is infringed.

The reasons for these problems are as follows:

- Lack of the possibility for lawyers to obtain restricted information, enshrined in the national legislation;
- Reluctance of individuals and organisations to provide information at lawyers' requests resulting from misunderstanding or neglecting of the essence and importance of lawyers' work on the protection of rights and freedoms; and
- Lack of responsibility for ignoring a lawyer's request or inoperative mechanism of responsibility.

3.2.5. Violation of principle of independence of lawyers in disciplinary procedure

Basic Principles on the Role of Lawyers⁸⁶

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognised international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall 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 review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognised standards and ethics of the legal profession and in the light of these principles.

Recommendation on the Freedom of Exercise of the Profession of Lawyer⁸⁷

Principle VI

Disciplinary proceedings

1. Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.

⁸⁵ Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

⁸⁶ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc.A/CONF.144/28/Rev.1 at 118 (1990)

⁸⁷ Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

2. Bar associations or other lawyers' professional associations should be responsible for, or where appropriate, be entitled to participate in the conduct of disciplinary proceedings concerning lawyers.

3. Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision.

4. The principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers.

Disciplinary action against lawyers is a means to ensure their specific professional conduct and the compliance of the legal assistance provided with the quality standards. On the other hand, disciplinary action is one of the ways to influence a lawyer, with the deprivation of the status of a lawyer used as the sanction of last resort. From this point of view, a strict balance between the disciplinary action and the principle of independence of lawyers takes the centre stage, as well as the exclusion of situations when disciplinary action could be used as a means of pressure against lawyers and interfere with their work. This balance can be achieved if: a disciplinary action is implemented by the autonomous bodies of professional associations; it is just and excludes any influence of the state at its any stage starting from the development and establishment of the rules of professional conduct to consideration of the disciplinary responsibility case; and, where the general rules of a fair trial should be observed.

The basic principles of the disciplinary procedure are enshrined in the surveyed countries' laws on the bar and codes of professional ethics of the lawyers' professional associations. However, one-third of the survey respondents indicated that the disciplinary procedure in their country is not

properly independent and just. In particular, the following problems were noted:

- Inadequate legislation allowing for state authoritative bodies' direct or indirect influence in the application of disciplinary actions against lawyers

The most serious problems appear in the legislation of Belarus, which assigns the responsibility to develop and adopt the professional code of conduct for lawyers to the Ministry of Justice⁸⁸, which not only undermines the principle of self-government and self-regulation of the bar associations, but also creates conditions for the interference with lawyers' work.

For example, one of the provisions of the Code of Conduct for lawyers establishes liability for "preventing the Ministry of Justice of the Republic of Belarus, other regulatory bodies, and the bar associations from the implementation of the functions assigned to them by the legislative acts". A violation of this rule may entail disbarment (i.e. deprivation of the status of a lawyer).

In addition, under the Law on the Bar of Belarus, the Minister of Justice has the right to initiate and to establish the deadline for disciplinary proceedings against a lawyer.⁸⁹

This provision is applied in practice and undermines the independence of the Bar's disciplinary body. Finally, the extensive powers of the Belarusian Ministry of Justice in respect of the legal profession - from the possibility of inspections to the right to suspend the decisions of the Bar, from the possibility to terminate the work of an individual lawyer to the early termination of the Bar Chairman's powers - force the bar associations to take a conciliatory position when it comes disciplinary action against the certain lawyers, whose work does not please the public authorities.

88 Para 1, Article 38, Law on the Bar and Legal Profession in the Republic of Belarus

89 Para 3, Article 22, Law on the Bar and Legal Profession in the Republic of Belarus

Belarus

In March 2011, after several requests of the Ministry of Justice to discipline the lawyer, the Minsk City Bar Association expelled Pavel Sapelko, a lawyer and a member of the Bar Presidium, who at that time was defending Andrei Sannikov, the former presidential candidate, and the two political activists, Dmitry Dashkevich and Pavel Severynets.⁹⁰

In addition, it is problematic to ensure the independence of the decisions taken by the Qualification Commission, a body that considers complaints against lawyers in Russia. For example, according to the Federal Law on the Bar, this body includes seven (7) lawyers and six (6) representatives of the state, while two-thirds (2/3) of the total number of the Commission members are required to make a quorum.⁹¹

Therefore, in practice, there are situations where a decision against a lawyer is taken by the Commission in which the state representatives outnumber lawyers.

Russia

“Article 33 of the Law on Bar and Legal Profession in the Russian Federation provides for no right to challenge the Commission members. As a result, when the Commission was considering the Ministry of Justice report on my disciplinary case, one of the Commission members was a representative of the Ministry of Justice with the right to vote. There is an obvious conflict of interest there: the Commission member, being an employee of the Justice Ministry, cannot be objective when considering a disciplinary action against a lawyer upon a complaint filed by the Justice Ministry.”⁹²

- The actual dependence of decisions taken by disciplinary bodies on public officers’ will

Azerbaijan demonstrates a negative example here: the bar associations interfere with lawyers’ work in ‘sensitive’ political cases by means of a disciplinary action. This interference is initiated, in particular, by courts: judges submit recommendations for the Bar to take disciplinary action against ‘disagreeable’ lawyers, up to expulsion from the Bar. Such recommendations are of an obligatory nature and are usually satisfied. Formally, lawyers can appeal against the decisions of the Bar, but in practice courts support the Bar’s disciplinary decisions, as they are interested in lawyers’ loyalty to the state.

Azerbaijan

“In fact, the body that is intended by law to engage in the protection of their members is a punitive authority for ‘unwanted’ lawyers.”

- Non-professional members of disciplinary body, failure of the professional associations to ensure transparent and fair disciplinary procedure,

Moldova

“No, we cannot talk about their independence, for it is a very rare case when they take a grounded and fair decision.”

Moldova

“...there are no criteria for dealing with complaints and applying sanctions; lawyers are not allowed to read the complaints received.”

Russia

“The legislation of Russia fails to spell out in detail the procedure for a disciplinary action against a lawyer; for example, it fails to provide for the obligation of the bar association to notify the lawyer and to send them the conclusion adopted by the qualifying commission if it was done in the absence of the lawyer. In practice,

90 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

91 Article 33 of the Federal Law on the Bar and Legal Profession in Russian Federation»

92 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

this results in the fact that a lawyer is less protected in case of disciplinary proceedings in terms of the procedural guarantees, than in case of any other proceedings, whether they are criminal or administrative.”⁹³

The reasons for these problems are as follows:

- Failure to fulfil the state’s positive obligation to enshrine the independence of disciplinary proceedings against lawyers in the law (especially in Belarus and Russia);
- Failure to fulfil the state’s negative obligation not to interfere with disciplinary proceedings, implemented by lawyers’ self-government bodies (especially in Azerbaijan and Belarus);
- Failure to organise and ensure properly the independence and transparency of the disciplinary procedure by lawyers’ professional associations, conformist behaviour of the professional associations’ governing bodies.

3.2.6. Violation of guarantees against interference with lawyers’ functioning

Basic Principles on the Role of Lawyers⁹⁴

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.

Recommendation on the Freedom of Exercise of the Profession of Lawyer⁹⁵

1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.

De jure, the national legislation on the Bars of Azerbaijan, Belarus, Moldova, Russia and Ukraine, have declared a ban on interference in lawyers’ professional activity⁹⁶ exercised in accordance with the law, and on impeding such activity. At the same time, in each of the countries surveyed, the enunciated guarantees for lawyers’ work are not equally protected by law.

In Belarus, the law fails to provide for any safeguards as regards lawyers’ work, except for the client-lawyer privilege and client-lawyer confidential communication protected to a certain extent.

93 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

94 Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

95 Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers’ Deputies)

96 Article 7, Law on the Bar and Legal Profession of the Azerbaijan Republic, 28 December 1999, No. 783-III; Article 16, Law on the Bar and Legal Profession in the Republic of Belarus, 30 December 2011, No. 334-3; Articles 51, 52, Law on the Bar of the Republic of Moldova, No. 1260, 19 July 2002; Article 18, Federal Law on the Bar and Legal Profession in the Russian Federation, 31 May 2002, No. 63-ФЗ (as amended on 02 July 2013); Article 23, Law the Bar and Legal Profession, Ukraine

Azerbaijan establishes liability for **threats or violence against lawyers and their close relatives committed in connection with the administration of justice or a preliminary investigation**, with a court hearing, or a pre-trial investigation, or execution of a sentence or other court orders.⁹⁷

In Moldova, a court decision is necessary: to search lawyers' homes, offices used to provide legal assistance, vehicles; to seize lawyers' belongings and documents; to search and seize lawyers' postal and telegraph correspondence; and, to wiretap phone conversations. Lawyers may not be searched or frisked while performing their professional duties, except for the apparent violations. In a case where a lawyer is detained or prosecuted, the authority that has applied these measures is obliged to inform the Ministry of Justice and the Council of the Union of Lawyers within six hours after the arrest or criminal prosecution.⁹⁸

In Russia, the law provides for a special procedure when it comes to criminal proceedings against lawyers⁹⁹ (Article 447, Code of Criminal Procedure of the Russian Federation).

Ukraine has criminalised interference in the work of a defence lawyer or a legal representative¹⁰⁰; threats or violence against a defence lawyer or a legal representative¹⁰¹; intentional destruction or damage of property of a defence lawyer or a legal representative¹⁰²; and, violence to life of a defence lawyer or a legal representative related to the provision of legal assistance.¹⁰³

However, undue interference in lawyers' work has been registered in each of these countries. The problem is that the guarantees for lawyers' work, laid down by the national law, are often just a declaration and do not work in practice.

Russia

"In practice, the guarantees enshrined in the laws boil down to pure formalities, as the law enforcement authorities and, above all, prosecutors and judges interpret the rules of law wrongly and interventions in lawyers' work go unpunished."

Ukraine

"The existing guarantees are ineffective. They are of a declarative nature; they have a complex application mechanism and provide for no serious repercussions for violations. In addition, a lawyer has to contend with the human factor—the reluctance of the law enforcement officers and judges to consider lawyers' complaints, because often these are complaints against their colleagues."

Moldova

"As for state-appointed lawyers, the National Council on Free Legal Assistance Guaranteed by the State has the right to inspect the work of a state-appointed lawyer on a particular case, to receive the relevant documents, etc., and sometimes can even replace the lawyer working on a certain case."¹⁰⁴

Moreover, in Belarus, the intervention in lawyers' work, unjustified in terms of the international standards, is reflected in the national legislation¹⁰⁵ that enshrines the broad powers for the Ministry

97 Article 288.2., Criminal Code of the Azerbaijan Republic (approved by the Law of the Azerbaijan Republic dated 30 December 1999, No. 787-IQ)

98 Para (2), (3), (4), Article 52, Law on the Bar of the Republic of Moldova, No. 1260, 19 July 2002

99 Article 447, Code of Criminal Procedure of the Russian Federation, 18 12 December 2001, No. 174-Ф3

100 Article 397, Criminal Code of Ukraine

101 Article 398, Criminal Code of Ukraine

102 Article 399, Criminal Code of Ukraine

103 Article 400, Criminal Code of Ukraine

104 Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova)

105 Article 38 of the Law on the Bar and Legal Profession in the Republic of Belarus (30 December 2011, No. 334-3) enshrines extensive powers of the Ministry of Justice in respect of the legal profession. For example, these powers include the formation and organisation of the Qualification Commission; the development and approval of the Code of Conduct; submissions to the Bar associations for disciplinary action against lawyers; receiving information and documents from lawyers' associations and individual lawyers; suggesting candidatures for the Bar Chairman election; suspension of decisions taken by the boards of the Bar associations

of Justice, negating the principle of independence of the legal profession.

The Belarusian legislation has also established the need for the periodic extension of every lawyer's license that is administered by the Ministry of Justice¹⁰⁶. The terminable nature of lawyers' licenses and the need for a renewal on the basis of a performance and competence assessment implies the periodic collection and analysis of information about every lawyer by the public authorities, regardless of lawyers' misconduct. The vague assessment procedure allows for unduly broad discretion of the Qualification Commission, administered by the Ministry of Justice, in regards to a possible failure by a lawyer to be confirmed. The whole procedure undermines the independence of the legal profession and is used by the executive authorities as a mechanism of influence on every lawyer in the country.

The Belarusian Ministry of Justice uses its statutory powers actively to intervene in lawyers' work, administering the licensing of lawyers, inspecting the work of individual lawyers and the bar associations, submitting proposals for the bar associations to take disciplinary action against lawyers, etc.

Belarus

“Between January and August 2011, the Justice Ministry of Belarus issued an improvement notice against the lawyer T. Sidorenko about the violations allegedly committed by her when giving an interview about the case of the former presidential candidate V. Neklyayev.

The Ministry conducted several audits of the lawyers' work and did not admit the lawyer to the performance and competence assessment procedure. On 30 August 30 2011, her lawyer's licence was terminated by the Decree of the Ministry of Justice. T. Sidorenko appealed the

decision in court, but the court upheld the position of the Justice Ministry. Despite the numerous protests and appeals that pointed at the violations of the rights of lawyers, the court decision has remained in force up to this day.”¹⁰⁷

The reasons for these problems are as follows:

- The absence in legislation of repercussions for unlawful interference with lawyers' professional activities or inactive mechanism of responsibility;
- The actual improper protection of lawyers by the state, including inadequate enforcement of guarantees for the legal profession laid down in the national law.

¹⁰⁶ Article 11, Law on the Bar and Legal Profession in the Republic of Belarus, 30 December 2011, No. 334-3; Chapter 10, Regulations on Licensing Certain Types of Activities, approved by Presidential Decree No. of 450 of 1 September 2010; Instruction on Lawyers' Performance and Competence Assessment, approved by Decree No. 34, 2 February 2012, Ministry of Justice of the Republic of Belarus

¹⁰⁷ Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

3.2.7. Breach of the principle of independence of professional associations of lawyers, inconsistency of their role with the international standards

Basic Principles on the Role of Lawyers ¹⁰⁸

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognised professional standards and ethics.

Recommendations on the Freedom of Exercise of the Profession of Lawyer ¹⁰⁹

Principle V Associations

1. Lawyers should be allowed and encouraged to form and join professional local, national and international associations which, either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.

2. Bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public.

3. The role of Bar associations or other professional lawyers' associations in protecting their members and in defending their independence against any

improper restrictions or infringements should be respected.

4. Bar associations or other professional lawyers' associations should be encouraged to ensure the independence of lawyers and, *inter alia*, to:

- a) promote and uphold the cause of justice, without fear;
- b) defend the role of lawyers in society and, in particular, to maintain their honour, dignity and integrity;
- c) promote the participation by lawyers in schemes to ensure the access to justice of persons in an economically weak position, in particular the provision of legal aid and advice;
- d) promote and support law reform and discussion on existing and proposed legislation;
- e) promote the welfare of members of the profession and assist them or their families if circumstances so require;
- f) co-operate with lawyers of other countries in order to promote the role of lawyers, in particular by considering the work of international organisations of lawyers and international intergovernmental and non-governmental organisations; and,
- g) promote the highest possible standards of competence for lawyers and maintain respect by lawyers for the standards of conduct and discipline.

5. Bar associations or other professional lawyers' associations should take any necessary action, including defending lawyers' interests with the appropriate body, in case of:

- a) arrest or detention of a lawyer;
- b) any decision to take proceedings calling into question the integrity of a lawyer;
- c) any search of lawyers themselves or their property;
- d) any seizure of documents or materials in a lawyers' possession; and,
- e) publication of press reports which require action on behalf of lawyers.

¹⁰⁸ Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

¹⁰⁹ Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

Thus, according to the international standards, professional associations of lawyers should be self-governing and independent from the authorities; protect their members from undue interference in their professional activities; and, promote continuing education for lawyers (in his report of 2010, the Special Rapporteur on the independence of judges and lawyers stressed the need to improve the competence of lawyers in human rights issues ¹¹⁰).

In Azerbaijan ¹¹¹, Belarus ¹¹², Moldova ¹¹³, Russia ¹¹⁴ and Ukraine ¹¹⁵ there is a strict requirement for lawyers to be members of professional associations.

The national legislation in the majority of the countries surveyed proclaims that bar associations are self-governing and independent¹¹⁶.

The research, however, revealed the following problems:

- The broad statutory powers provided for the Ministry of Justice when it comes to the Bar (Belarus) ¹¹⁷ and its actual control by the executive authorities indicate the dependence of the bar associations on the public authorities.
- The majority of the respondents noted that, despite the proclaimed independence, in fact, the bar associations are not independent.

110 L. DESPOUY, Report of the Special Rapporteur on the independence of judges and lawyers to the General Assembly, 28 July 2009, para 30: <<http://www.ohchr.org/Documents/Issues/Judiciary/A-64-181.pdf>>

111 Section I, Article 9, Law on the Bar and Legal Profession of the Azerbaijan Republic

112 Article 7, Law on the Bar and Legal Profession in the Republic of Belarus

113 Articles 32, 35 and 47, Law on the Bar of the Republic of Moldova, No. 1260, 19 July 2002

114 Section I, Article 29, Federal Law on the Bar and Legal Profession in the Russian Federation, 31 May 2002, No. 63-ФЗ (as amended on 02 July 2013)

115 Section I, Article 45, Law on the Bar and Legal Profession, Ukraine

116 Section I, Article 9, Law on the Bar and Legal Profession of the Azerbaijan Republic; Article 33, Law on the Bar of the Republic of Moldova. Section I, Article 2, Law on the Bar and Legal Profession, Ukraine

117 Article 38, Law on the Bar and Legal Profession in the Republic of Belarus

“The Ministry of Justice imposes strict supervision on lawyers’ organisations, as well as on any other non-profit organisations in Russian Federation.”

- The administration of the Bar associations is not democratic.

Azerbaijan

“The same persons have been heading the Bar for 20 years.”

Belarus

“They do not hold the General Meetings of the Bar. Decisions are adopted at the conferences by delegates who take an opportunistic position. The law enables the Ministry of Justice to influence the election of the Bar Chairman.”

Moldova

“Favouritism is thriving, along with the unwillingness to promote reforms and change the image of the legal profession in the country, as well as the corruption of the Bar seniors, reluctant to ensure budget transparency. Being controlled by the authorities, judges, prosecutors, the heads of the Bar do not want to clash with the government officials.”

Russia

“It is not the General Meeting that elects the President of the Chamber of Lawyers; the Board of the Bar elects the President from among its members. Thus, the election of the Lawyers’ Chamber President fails to implement the universal suffrage. It is virtually impossible to terminate the presidency, even if the President of the Chamber of Lawyers has been found to have committed substantial misconduct.” ¹¹⁸

118 Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

Ukraine

In April 2015, the National Congress of Ukrainian lawyers held the elections of members of the Ukrainian Supreme Council of Justice (the body responsible for appointment and removal of judges). The entrance to the room where the congress took place was blocked by the police and an unknown guard force invited by the senior executives of the National Bar Association of Ukraine in order to prevent unwanted lawyers from accessing the congress.¹¹⁹

- There are frequent cases of the Bar's unjustified interference in lawyers' work.

In addition, the countries' national legislation fails to establish the safeguards against such interventions.

Azerbaijan

"The Bar punishes lawyers for any complaint against them. Formally, lawyers can appeal against the decisions of the Bar. But, in practice, the courts always support the Bar's decisions."

Belarus

"The letter by the National Bar Association, which recommended the lawyers to get approval for their interviews in media from the heads of legal consultations offices, and chairs and deputy chairs of the bars, drew response of the public. The deputy chairs were obliged to mandatorily examine the lawyers' interviews published by media and forward them to the National Bar Association. The discussions came to conclusion that doing so they try to limit any activities of lawyers and to intimidate them into refusal to take on political cases."¹²⁰

Moldova

"There is much interference with lawyers' work on the part of the Bar. Often, lawyers just perform the tasks given by the Bar seniors,

instead of taking the side with the law and justice."

Russia

"These bodies enjoy virtually limitless control functions, including a request for and review of a client-lawyer contract protected by the client-lawyer privilege. The powers of the Bar are unlimited and uncontrollable."

Ukraine

"If you wish, you can easily deny the right to practice law to a lawyer. Of course, the right to apply to the final appeal courts does exist. However, there is also a problem there with the implementation of the guarantee of the right for fair justice."¹²¹

- The bar associations fail to protect their members from undue interference with their professional activities. The majority of the respondents have noted this fact.

Belarus

"As for lawyers' licenses, the law excludes professional lawyers' associations from the decision-making procedure, which means they actually cannot protect lawyers. The legal community does not seek to protect a lawyer who is in disfavour."

Moldova

"In case the prosecuting authorities or judges persecute and criticise lawyers, the bar association fails to protect the lawyers or engages in the protection with a delay."

Russia

"If the government is interested in the persecution of a lawyer, the bar association cannot protect them. Moreover, the bar association makes no effort to change the attitude of the Russian society to the legal profession."

¹¹⁹ <https://www.youtube.com/watch?v=605o-16AfS4>
¹²⁰ <http://platformarb.com/advokaty-sami-sebe-zatykayut-rtj/>

¹²¹ Source: materials of the conference "Additional Guarantees and Immunities for Human Rights Lawyers" (13 - 15 February 2015, Chisinau, Moldova)

Ukraine

“The story of Viktor Smaliy illustrates the lack of the protection of lawyers’ interests. In early 2014, the lawyer was detained by the judicial authorities. Representatives of the bar apologised to the authorities for the lawyer’s “misbehaviour” right away, without even considering the background and the reasons for the detention.”¹²²

- There are also problems with regard to continuing education for lawyers.

The bar associations conduct a training course only before the admission to the Bar, no further educational activities follow (Azerbaijan); the law obliges lawyers to have a certain number of training hours annually, however, the bar association fails to provide such training (Moldova); the legislation contains no clear definition of what can be counted as professional development of lawyers; and, in practice, this results in the lack of the uniform approaches and control (Russia).

There is no information in all the countries surveyed about the bar associations raising lawyers’ awareness in the field of human rights.

The reasons for these problems are as follows:

- The proclaimed independence of the bar associations is not ensured in practice;
- Bar associations actually depend on and are controlled by the public authorities, mainly by the Ministry of Justice;
- National laws on the legal profession create preconditions for non-democratic governance of the bar associations;
- National legislation fails to provide for safeguards against undue interference of the bar associations in lawyers’ work;
- Bar associations lack the real capacity and willingness to protect their members from undue interference in lawyers’ work; and,
- Bar associations lack understanding of the need for continuing education of lawyers in human rights.

¹²² Source: materials of the conference “Additional Guarantees and Immunities for Human Rights Lawyers” (13 - 15 February 2015, Chisinau, Moldova)

3.3. Deficiency of guarantees and immunities for human rights lawyers

Alongside the lawyers, who have a formal status in accordance with the national legislation, other legal professionals, who work individually or in nongovernmental organisations, legal clinics, etc., provide legal assistance defending human rights and freedoms. The activities of these legal professionals are legitimised in accordance with the international standards of human rights work.¹²³ In addition, the national legislation offers them certain powers and possibilities to provide legal assistance for the protection of human rights in the national legal system.¹²⁴ These legal professionals also often provide legal representation before the international bodies. Their work becomes especially important for human rights protection in the states, where guarantees for legal activities are not observed and the principle of the independence of lawyers and the Bar is not properly implemented.

According to the survey, conducted among the ILIA programme participants and alumni for the purposes of this report, neither legal education, nor postgraduate courses arranged by the bar associations provide knowledge of the human rights concept and instruments.¹²⁵

In these situations, the lawyers, who are not members of the professional associations, and who specialise in the use of the international

¹²³ Para 3 c), Article 9 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms enshrines the right of everyone to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

¹²⁴ In accordance with the legislation of Belarus, legal professionals without the formal status are not prohibited from providing free legal counseling. In Moldova these lawyers can only provide consultations not related to criminal law. The national legislation of Azerbaijan give any lawyer the authorities to provide consultations and represent clients in courts of the first instance and cassation courts except for criminal cases. In Russia and Ukraine, any legal professional can represent clients in civil trial and together with the lawyer – in criminal procedures.

¹²⁵ According to the survey, conducted among the ILIA Program participants and alumni for the purposes of this report, neither the legal education, nor the postgraduate courses arranged by the bar associations provide the knowledge of the human rights concept and instruments.

mechanisms for the protection of human rights, ensure implementation of the right to a lawyer of one's choice provided that these lawyers observe the professional standards of quality and fair practice.¹²⁶

At the same time, neither legislation nor its application in the states reviewed in this report provides guarantees and immunities for lawyers who are not members of professional associations, which entails vulnerability for their clients. The survey showed that the biggest risks appear due to lack of guarantees of confidentiality and lack of access to documents and clients in detention facilities and prisons.

The international and European standards related to the effective implementation of their functions by legal professionals, lack the clear instructions for the states to ensure these standards for all lawyers who protect human rights at both national and the international level, whether they have the formal status of a lawyer or not. This situation creates prerequisites for the states to ignore these standards in their legislation and to hinder this kind of work in practice with impunity.

3.3.1. Confidentiality

In accordance with the national legislation, the concept of the 'client-lawyer privilege' and the relevant immunities - against being interrogated as a witness, searches and seizures of records and documents related to legal assistance, perusal and seizure of client-lawyer correspondence - is only applicable to lawyers who are members of the Bar. Other lawyers performing similar functions - providing legal advice, representation in national courts (in those allowed under the national law) or before the international bodies - do not enjoy these immunities. In practice, this results in interference with their work and a breach of the adversarial principle and equality of arms, because the state, as the procedural opponent in terms of the human rights protection, has virtually unhindered access to the information and evidence trusted to a legal professional, and the possibility to seize them.

A striking example here is the case of the Azerbaijani lawyer and human rights defender Intigam Aliyev. After his arrest on 8 August 2014, many files of the cases that he had represented before the European Court of Human Rights were seized during the search in the office of his organisation and in his home and appeared in the hands of the law enforcement authorities of Azerbaijan.¹²⁷

Other States demonstrated similar negative examples.

“On 15 October 2010, under the pretence of investigating a criminal case on alleged porno-peddling, police officers searched the apartment of the Vinnitsa Human Rights Group (Ukraine) coordinator and the office of the organisation without a search warrant. The police seized all the computers, data storage devices, and case files on the complaints filed with the ECtHR, on court cases of refugees who received legal assistance from the organisation, and documented evidence of torture and ill-

¹²⁶ Article 11 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms recognises that everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

¹²⁷ <http://humanrightshouse.org/Articles/20878.html>

*treatment applied by the authorities. (Excerpts from the materials provided by the participants of the ILIA Programme's conference "Additional Guarantees and Immunities for Human Rights Lawyers", 13 - 15 February 2015, Chisinau, Moldova.)*¹²⁸

3.3.2. Access to documents and case files

According to the national legislation of Azerbaijan, Belarus, Moldova, Russia, and Ukraine, access to case files and materials is given to legal professionals entitled to implement defence or representation in the national litigation proceedings. However, if a legal professional is not entitled to represent a victim of human rights violations before the national court, but later represents the person before the international institutions (e.g. the European Court of Human Rights and the UN Human Rights Committee), this legal professional is unable to gain direct access to the file of the case considered by the court.

This becomes a serious problem if the person, whose rights need to be protected before the international body, is in prison.

3.3.3. Access to lawyers and lawyers' access to the person they represent

The national legislation in the countries surveyed and presented in this report contain restrictions on the practice of law which create obstacles for legal professionals without the formal status of a lawyer when it comes to visiting a person whose human rights they protect in the detention facilities and prisons.

In the criminal proceedings, the right to visit a detainee or a remand prisoner belongs to their defender, and this can only be their lawyer, with few exceptions.¹²⁹ Even where the legislation provides for access of a defender other than a lawyer upon a motion of the defendant, in practice, these defenders will often be not allowed to visit prisoners or detainees.

As for the right of prisoners to legal assistance, the law of the countries under consideration regulates it somewhat more broadly. The Penal Codes of Azerbaijan, Belarus, Russia, Moldova, and Ukraine provide for the right of the convicted to obtain legal assistance from lawyers and "other persons" (in Ukraine these persons are defined as "legal specialists") who have the right to provide legal assistance.¹³⁰

However, the law fails to define the circle of such "other persons", which, in practice, results in obstacles to the access of legal professionals, who do not have the formal status of lawyers, but protect human rights at the national and international level, to persons serving a sentence of imprisonment. In fact, it depends on a decision taken arbitrarily by the penal colony administration, whether these legal professionals will obtain admittance to their defendants and

¹²⁹ Article 92.1, Code of Criminal Procedure of Azerbaijan, 14 July 2000, No. 907-IQ; Article 44, Code of Criminal Procedure of Belarus; Article 67, Code of Criminal Procedure of Moldova; Articles 45, Code of Criminal Procedure of Ukraine.

¹³⁰ Article 87.1, Penal Code of Azerbaijan; Article 10, Penal Code of Belarus; Article 169, Penal Code of Moldova; Article 12, Penal Code of the Russian Federation; Article 8, Penal Code Of Ukraine.

¹²⁸ See also: <http://www.mhg.ru/news/FB24185>

the proper conditions for the provision of legal assistance.

The stated problems result from the states' failure to ensure the proper legal conditions for unimpeded provision of legal assistance by the lawyers who legitimately protect human rights but do not have the formal status of a lawyer in the national legal system.

IV. Recommendations

The continued and increasing pressure on human rights lawyers calls for stronger international protection standards.

Already existing standards on the protection of human rights defenders must be implemented widely nationally, in order to increase the effectiveness and safety of legal assistance to victims of human rights violations.

As a basic principle of rule of law, and in order to guarantee fair trial rights, governments must avoid interfering with the rights of lawyers to represent the clients of their choice, such as victims of human rights violations, and to work on issues they choose, such as human rights. The independence of professional organisations of lawyers must therefore be respected and disbarment must be an administrative measure aimed at ensuring professional and ethical standards of the profession, not as a punishment dispensed by the government.

All guarantees and immunities of lawyers must be equally respected for human rights lawyers. National and international authorities must, in particular, ensure that human rights lawyers have the same level of access to their clients and of confidentiality in their communication with their clients as any other lawyers, and be in line with international standards.

Recommendations to the governments of **Azerbaijan, Belarus, Moldova, Russia and Ukraine:**

- Put an end to the repression targeting human rights lawyers. Immediately cease the persecution and all forms of harassment of lawyers who are providing assistance to human rights defenders, journalists and activists. The same applies for lawyers directly involved in human rights advocacy. Immediately and unconditionally release and rehabilitate the civil and political rights of all human rights lawyers detained due to their work and who thus are prisoners of conscience. Drop all charges and investigations pending against such lawyers, and their human rights organisations, as in the case of Intigam Aliyev in Azerbaijan.

- Ensure a prompt and independent investigation in all cases of threats, persecution and violence against human rights lawyers, and bring the perpetrators to justice. Provide an effective and immediate remedy for the victims.

- States must take concrete steps to prevent and stop the use of legislation to unduly hinder the ability of human rights lawyers to conduct their work, in compliance with standards set in the resolution 22/6 of 21 March 2013 of the United Nations Human Rights Council on the protection of human rights defenders.

- Guarantee the right to protection in cases of human rights violation. To this end, ensure such understanding and application of the notion “legal assistance to victims of human rights violations” that covers the powers provided for in Article 9, paras 3 and 4, of the Declaration on Human Rights Defenders, and takes into consideration national and international professional standards and ethics of the legal profession.

- Publicise the measures taken to prevent reprisal against lawyers representing victims of human rights violations who appeal to international organisations to protect rights and freedoms. This is in line with the State's obligations under Article 34 in fine of the European Convention for Human Rights and Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the resolution 12/2 of 12 October 2009 of the UN Human Rights Council on the cooperation with the United Nations.
- Ensure, both in the law and in practice, the independence of professional associations of lawyers, by refraining from interference with such associations in the protection of their members from undue interference with their ability to provide legal assistance. Furthermore, ensure the exclusive right for bar associations to develop and adopt professional codes of conduct.
- Leaders in all sectors of society must acknowledge publicly the important and legitimate role of human rights lawyers in the promotion of human rights, democracy and rule of law, and avoid stigmatisation of human rights lawyers, in line with the resolution 22/6 of 21 March 2013 of the United Nations Human Rights Council on the protection of human rights defenders.
- Systematically attend and observe, at the highest diplomatic level, trials of human rights lawyers, as a key manner to condemn prosecution of human rights lawyers due to their work.
- Follow, at the highest level of the organisation, cases of reprisals against lawyers representing victims of human rights violations who appealed to international organisations to protect their rights and freedoms. The Council of Europe should establish a mechanism to prevent and follow-up on cases of reprisals against those who cooperate with Council of Europe bodies, with a specific focus on human rights lawyers and their interaction with the European Court of Human Rights, in line with Article 34 in fine of the Convention.
- Pay particular attention to the persecution of human rights lawyers in documenting the situation of human rights defenders, and adopt international standards aimed at reinforcing guarantees and immunities of human rights lawyers.

Recommendations to the international community:

- Publicly condemn cases of threats, persecution and violence against human rights lawyers, or other forms of harassment, and provide moral and financial support to such lawyers and their relatives. Attend events organised by human rights lawyers as a sign of public support for their work.

V. Annex

Comparative and Legal Analysis of Certain Terms Used in the Report

The report and recommendations include various terms and concepts, some of which have been only recently introduced in international public law and need to be interpreted due to their wide use in human rights law. The principle of legal certainty requires uncovering the content of the new concepts and specifying the new characteristics of the “old” terms. Because of the absence of court decisions and/or experts’ doctrines¹³¹ in respect to the new terms such as Human rights defender, Human rights activities, and Legal assistance for human rights violations, the report’s authors tried to conduct their own analysis of these and other terms demanding updated definitions. The analysis results were discussed and improved over the course of several meetings of the experts who took part in the writing of this report.

The analysis was conducted to reveal the volume and the balance between general and special guarantees assigned to human rights defenders and human rights lawyers. The authors used the known provisions, reports of international organisations, definitions from legal and general dictionaries (mainly electronic ones) and academic research. The analysis is also based upon the empirical data obtained in the course

¹³¹ Article 38 of Statute of the UN International Court of Justice highlights the judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law.

of events conducted as part of the Human Rights House Network’s International Law in Advocacy programme.¹³²

The concepts analysed have been arranged into the following groups:

1. Human rights defender and human rights activities
2. Jurist. Lawyer. Human rights lawyer
3. Legal assistance. Legal assistance for human rights violations
4. Guarantees and immunities.

I. Human rights defender and human rights activities

I.1. Human rights defender

A human rights defender is anyone who individually and in association with others promotes and strives for the protection and realisation of human rights and fundamental freedoms at the national and international levels.¹³³

The term human rights defender was included in the vocabulary of human rights international law when the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (hereafter referred to as the Declaration or the Declaration on Human Rights Defenders) was adopted by the UN General Assembly on 9 December 1998. Though the Declaration itself is based on the international treaties¹³⁴, and it does not include the term human rights defender, the term has become widely used in addition to other terms (human rights activists, rights defenders,

¹³² For description of actions see Refof this Report...

¹³³ UN Declaration on Human Rights Defenders (1998), Article 1.

¹³⁴ International Bill of Human Rights is a collection of international documents, namely, the International Covenant on Economic, Social, and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and its two Optional Protocols with the Universal Declaration of Human Rights (1948).

civil activists, justice defenders, etc.)¹³⁵ to emphasise the role of individuals and associations of individuals involved in human rights promotion and defence at the local, national, regional, and international levels.

The term and concept of human rights defender embrace all those who promote and protect all human rights using peaceful means and without discrimination. Human rights defenders can join structured or non-structured groups of people or organisations such as associations or foundations.

Anyone, regardless of occupation, can be a human rights defender; it is the activities, not the profession, that primarily determine the role of a human rights defender.¹³⁶

The United Nations General Assembly and Human Rights Council regularly and unanimously adopted resolutions proclaiming the rights related to work and activities of human rights defenders.¹³⁷ In addition, to ensure reinforcement of their protection, the UN and Parliamentary Assembly of the Council of Europe established the institution of Special Rapporteurs on the situation of human rights defenders.¹³⁸

The experts of the OSCE Bureau on Democracy and Human Rights in their Guiding Principles on Protection of Human Rights Defenders (2014)

stressed *that anyone promoting and striving for the realization of human rights is a human rights defender*, regardless of profession, age or other status, or whether they are carrying out their human rights activities individually or jointly with others, as part of an informal group or a non-governmental organisation, or whether they act in a voluntary capacity or professionally. **Lawyers** [boldface added by the comparative legal analysis' authors], trade unionists, staff of national human rights institutions (NHRIs), journalists, medical professionals, public servants and students, among others, can be human rights defenders.¹³⁹

1.2 Specific groups of human rights defenders

The international law considers anyone engaged in human rights activities a human rights defender. It was also noted at the international level that special conditions should be created for the protection of specific groups of human rights defenders: women, human rights defenders protecting economic, social, and cultural rights, and defenders of minorities' rights, including the rights of autochthonous peoples and representatives of sexual minorities.

In 2013, *Lex specialis* provisions¹⁴⁰ for women human rights defenders were introduced by international law.¹⁴¹

135 Guidelines on Human Rights Education for Human Rights Activists, OSCE-ODIHR (2013), page 13, Justice Defenders http://www.americanbar.org/groups/human_rights/justice_defenders.html.

136 Amicus Curia letter to the ECHR INTIGAM ALIYEV V. AZERBAIJAN (Application No. 68762/14) WRITTEN COMMENTS BY HELSINKI FOUNDATION FOR HUMAN RIGHTS, HUMAN RIGHTS HOUSE FOUNDATION AND FREEDOM NOW, 13 MARCH 2015, Justice Defenders Program http://www.americanbar.org/groups/human_rights/justice_defenders.html
137 Resolution 66/164 of 19 December 2011; resolutions of the Human Rights Council 16/5 of 24 March 2011 and 22/6 of 21 March 2013; resolution of the Human Rights Council 22/6 of 21 March 2013. Resolution of the UN General Assembly 68/181 of 18 December 2013.

138 Special Rapporteur on the situation of human rights defenders, <http://www.ohchr.org/RU/HRBodies/SP/Pages/Themes.aspx>

139 Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014), Section B, Explanatory Report, para 7, page 37.

140 *Lex specialis derogat generali* (Latin for "law governing a specific subject matter"[1]) is a general principle of law dating back to Roman Law. The essence of the principle reduces to the following: a law governing a specific subject-matter (*lex specialis*) overrides a law that only governs general matters (*lex generalis*).

142 UN Resolution 68/181 of 18 December 2013, "Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders" dedicated to additional guarantees for women human rights defenders. The document appeared due to the work of the Commission on the Status of Women and was based on evaluation review of a special panel discussion dedicated to the status of women human rights defenders (June 2012). The necessity of special regulatory guarantees were substantiated by the claims that this category of human rights defenders often faced threats and harassment and also, by the facts of historical and structural inequalities in power relations and discrimination against women. It was also taken into consideration that domestic law and administrative provisions allow for criminalization and stigmatization of women human rights defenders and that legislation and its practice should not create impediments and obstacles, restrictions or selective enforcement thereof contrary to relevant provisions of international human rights law. See, e.g. Preamble, part 9 and 12.

The Guidelines on the Protection of Human Rights Defenders (2014) listed lawyers, trade unionists, staff of national human rights institutions, journalists, medical professionals, public servants, students and others, indicating that representatives of these groups can be human rights defenders.¹⁴²

1.3. Advocacy (human rights work, human rights activities)

Advocacy means any activities aimed at promotion, defence, and implementation of human rights and freedoms.

Regulatory framework of the concept of a human rights defender contains the list of actions, which can be divided into two groups: 1. Actions *implemented* in process of realisation of the recognised *rights and freedoms* enshrined in the international human rights treaties. 2. Specific *actions* required for effective realisation of human rights activities and therefore enshrined in the Declaration on Human Rights Defenders. The actions of both groups overlap in some way.

1. *The rights and freedoms enshrined in the international human rights treaties* and other applicable international treaties are implemented in process of human rights activities: the rights to meet or assemble peacefully; to form, join and participate in non-governmental organisations, associations or groups; to communicate with non-governmental or intergovernmental organisations; to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention

to those matters; to have effective access, on a nondiscriminatory basis, to participation in the government of his or her country and in the conduct of public affairs; and, to benefit from an effective remedy and to be protected in the event of the violation of those rights.¹⁴³

2. *Special kinds of activities*, which are necessary and legitimised when it comes to goals and objectives of human rights activities¹⁴⁴: the right to either in person or through legally authorised representation, to complain and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay; to complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay; to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments; individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms; to participate in peaceful activities against violations of human rights and fundamental freedoms; and, to solicit,

¹⁴² See Ref. 10.

¹⁴³ Articles 5,6,7, 8 para 1 of UN Declaration on Human Rights Defenders (1998)

¹⁴⁴ Article 8 para 2, article 9, 11, 12 para 1, article 13 of UN Declaration on Human Rights Defenders (1998)

receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

International law formulates three kinds of limitations to be observed when carrying out activities that are recognised to be human rights work:

1. To use peaceful means;
2. To apply non-discriminatory (equal) approach and show respect for all human rights and freedoms; and,
3. To comply with the relevant national and international standards of occupational and professional conduct or ethics.¹⁴⁵

2. Jurist. Lawyer. Human rights lawyer

In the analysis of the terms and concepts of *Jurist* and *Lawyer* it is important to take into consideration that in the countries addressed in this report jurists and lawyers have unequal authorities regarding the types of legal assistance and the volume of professional guarantees.

2.1. Jurist

Jurist (derived from Latin *jus—law*) (German *Jurist*, English *Jurist*) is a specialist in jurisprudence, legal sciences; the one who practices the law¹⁴⁶, a person with legal education, legal expert; legal practitioner¹⁴⁷. Law Dictionary defines jurist as the one who is versed or skilled in law; answering to the Latin *jurisperitus*, (q. v.). One who is skilled in the civil law, or law of nations. The term is now usually applied to those who have distinguished themselves by their writings on legal subjects.”¹⁴⁸

145 Para 11, 12 of UN Declaration on Human Rights Defenders
146 <https://ru.wikipedia.org/wiki/%D0%AE%D1%80%D0%B8%D1%81%D1%82>

147 Law dictionary, <http://dic.academic.ru/dic.nsf/lower/19490>

148 Law Dictionary: What is JURIST? definition of JURIST (Black's Law Dictionary)

In Azerbaijan, Belarus, Moldova, Russia and Ukraine, a person needs secondary or higher legal professional education to be able to practice law. In these countries this term and concept unites all those engaged in manifold professional legal activities: judges, investigators, prosecutors, notary publics, lawyers.

The analogue for this term and concept in English is lawyer, which is also an umbrella term for other types of legal profession (barrister, judge, attorney, counselor or solicitor).¹⁴⁹

The title of the international document adopted by the UN Nations Congress on the Prevention of Crime and the Treatment of Offenders, which regulates legal guarantees for this professional group is translated into Russian as Основные принципы, касающиеся роли юристов.¹⁵⁰

When interpreting certain provisions of this document, the term lawyer is understood narrowly and does not include judges, prosecutors, representatives of the executive and legislative bodies, etc.¹⁵¹ Besides, for the purpose of this document, the object of the legal regulation and special guarantees is, above all, the work of legal representatives in criminal proceedings. It appears that for the most accurate understanding of the content of this document, the English term lawyer should be translated as “адвокат”.¹⁵² At the same time, it is important to note that the preamble of this document directly orders that the standards and guarantees recognised for lawyers should apply to persons who perform the functions of lawyers without the relevant formal status.¹⁵³

149 <http://en.wikipedia.org/wiki/>

150 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, 27 August to 7 September 1990

151 See Preamble, last paragraph, first sentence.

152 It can be argued with high probability that in the United States, a lawyer is a person who practices law (both in litigation and beyond the courtroom), having obtained the certain status through the relevant qualification and admission procedure. This largely coincides with the content of the term “адвокат” used in the Russian legal environment. See: Кубышкин А. В., Шаров Г. К., Некоторые аспекты регулирования вопросов адвокатской этики в США, “Адвокат”, 2007, N 5. (A.V. Kubyschkin, G.K. Sharov, Some Aspects of Legal Ethics Regulation in the United States, “Адвокат” (The Lawyer, periodical), 2007, No. 5).

153 Paragraph 11 of Preamble of the Basic Principles on the Role of Lawyers

This wording obviously stresses that this document, even with its narrow interpretation of the term lawyer, should apply to all and any who are actually admitted to perform the functions of defence and legal representation.

It is noteworthy that in the Russian translation of the regional document that defines guarantees for members of the legal profession, the Recommendations on the Freedom of Exercise of the Profession of Lawyer Rec(2000)21¹⁵⁴, adopted by the Committee of Ministers of the Council of Europe, the term “адвокат” (lawyer) was used.

2.2. Lawyer

Lawyer (Latin *advocatus* – *advoco* – I call, invite) is a professional who provides qualified legal assistance to individuals and legal entities, including the protection of their interests and rights in court.

In Azerbaijan, Belarus, Moldova, Russia and Ukraine, the admission to profession of a lawyer implies a number of conditions: higher legal education, probation, qualification exam, and membership in a professional association of lawyers. In Belarus and Moldova, to exercise lawyers’ activities, the lawyers are obliged to obtain a license from the Ministry of Justice.

2.3. Comparison of the concepts “адвокат” (advokat) and “юрист” (jurist)

The English lawyer stands for both “адвокат” and “юрист”. The first case is in the narrow special sense: defence lawyer, attorney, while the second case is in the broad sense – legal professional. It is necessary to clarify the list and the scope of the guarantees and immunities that may apply, *de jure* and *de facto*, to the human rights activities carried out by these two groups.

The legal systems in question have a common feature when it comes to legal regulation of the status of a lawyer and a jurist (legal professional) in the national legislation: a lawyer falls within a smaller group, burdened with a larger number of duties before the State and clients, and also enjoys guarantees and immunities as are necessary for the effective and independent implementation of the protection functions.

The international legal instruments that contain a list of guarantees and immunities for members of the legal profession¹⁵⁵, despite some contradictions in the translation of the term lawyer into Russian¹⁵⁶, emphasise the following aspects:

First, the main characteristics that define the status of persons who enjoys and assumes the privileges and responsibilities listed in these documents, are as follows: qualification (“a person qualified”¹⁵⁷) and powers to perform actions aimed at protecting the rights and interests of the client in accordance with the national law (“authorised according to the national law”¹⁵⁸).

Second, membership in a professional bar association is not a key feature characterising a practicing lawyer and, accordingly, should not be seen as an obstacle for applying the guarantees and immunities that are enshrined as international standards to lawyers that are not members of bar associations.

¹⁵⁴ Recommendation of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers’ Deputies.

¹⁵⁵ Basic Principles on the Role of Lawyers 1990, Recommendations REC(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer.

¹⁵⁶ See comments in a previous section.

¹⁵⁷ See Preamble, last sentence, Recommendations REC(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer..”lawyer” means a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters.” Basic Principles on the Role of Lawyers (1990) do not include the definition of the term “lawyer;” system analysis of certain articles allows to specify the same characteristics in respect of the term in question (see, for example, Articles 9, 13, 14, 15 etc.).

¹⁵⁸ Ibid

Finally, the interpretation of these standards on the basis of the non-discrimination principle and the provisions of Article 2 of the Covenant on Civil and Political Rights that requires States to create the conditions for ensuring equal and effective protection of the violated human rights and freedoms to everyone, suggests that according to the letter and spirit of these documents, every practicing legal professional who acts according to the rules established by national law and ethical standards must have the same guarantees and immunities as enjoyed by lawyers. Otherwise, clients represented by “jurists” (legal professionals, but not lawyers), would be in an unequal position, which would be contrary to the principles underlying all the instruments adopted for the protection of human rights.

As the analysis of the national and international law and practice shows, this very approach is applied in the legal representation before the international judicial and quasi-judicial bodies. After legal representatives have confirmed the relevant experience and qualifications, the international bodies (UN Human Rights Committee, European Court of Human Rights) grant them the status of lawyers in the proceedings and, therefore, recognise the powers and the relevant lawyer’s guarantees for all legal professionals admitted to the legal representation in the international bodies of justice.¹⁵⁹

In practice, as shown in Part III of the report, the lack of the legal regulation regarding guarantees and immunities for legal professionals who perform the functions of lawyers, but are not

members of the bar associations, remains a serious problem.

2.4 Human rights lawyer

Human rights lawyer is a term that implies both members of lawyers’ professional associations and those working in other organisations (institutions) or individually, if their work is aimed at promotion and protection of human rights and freedoms. Generally speaking, this concept extends to all who work in the field of defence and realisation of human rights, i.e. not only to legal professionals and lawyers.¹⁶⁰ For the purposes of this report, the term human rights lawyer is used in a narrow sense and means every lawyer who is engaged in the protection of human rights. At the same time, it is obvious that a human rights lawyer is subject to the general obligations imposed on human rights defenders.¹⁶¹

It should be noted that not all the respondents agree that the term *human rights lawyers* should be applied to those who work with the human rights doctrine and instruments. They point out that the term entails disintegration of lawyers’ community and, at the same time, may be misleading when it comes to status and activities of other lawyers.

¹⁵⁹ Thus, according to the Rules of Court (Rule 36) of the ECtHR, the representative acting on behalf of the applicant shall be an advocate authorised to practise in any of the Contracting Parties, or any other person approved by the President of the Chamber. The approval procedure is similar to any other procedural request to the ECtHR (under Rules 39, 40 and 41). A short application is enough, with a reference to Rule 36, explaining that although the lawyer has no status of an advocate, he or she is experienced enough/ knows the Convention well enough to represent the applicant. The request is considered by the lawyer of the Secretariat, who forwards a note to the President of the Chamber with a proposal to either satisfy or deny the motion. Usually the Court has no problems with approval of the representative, if he or she is a member of a human rights NGO and has sufficient experience of work with the Convention (including academic experience). - consultations by Andrey Yesin, an employee of the ECtHR Secretariat

¹⁶⁰ This term was first heard on the sidelines of the final conference of the training cycle “Electronic Human Rights Education for Lawyers” (EHREL), held as part of the HRHN’s ILIA Programme, in May 2013, during the discussion about the project of support for lawyers who are threatened for their professional human rights activities. The term has become a part of the name of the special on-line platform, created to cover the problems of and remedies for lawyers in the countries participating in the programme: <http://ilia.humanrightshouse.org/course/view.php?id=93>. Before the beginning of the next (2014-2015) distance learning cycle, the experts had defined the term and included it in the ILIA programme Glossary: <http://ilia.humanrightshouse.org/mod/glossary/view.php?id=2301>

¹⁶¹ to use peaceful means, to apply non-discriminatory (equal) approach to and show respect for all human rights and freedoms, and to comply with relevant national and international standards of occupational and professional conduct or ethics - Articles 11, 12, Declaration on Human Rights Defenders.

3. Legal assistance. Legal assistance for victims of human rights violations

The analysis of these concepts was caused by the necessity to evaluate the balance between the two, to specify an umbrella concept, and to elaborate on the definitions in this report.

It should be noted that in legal systems presented in this report, the terms “legal assistance”, “free legal assistance,” and “subsidised legal assistance”¹⁶² are also used. All of them, as a rule, refer to the concepts of qualified assistance provided by lawyers and legal professionals acting on the basis of the national legislation.

3.1. Legal assistance

Legal assistance is an umbrella concept applied with respect to various types of legal services provided by lawyers (legal professionals). For example, consulting on and explanation of legal issues; elaboration of applications, complaints and other legal documents; representation of a client before the court, in state bodies, other organisations, including governing bodies, and individuals; and, participation in pre-trial procedure and criminal court proceedings as a defender and representative of civil claimants, civil defendants, etc. In some countries legal professionals and lawyers have unequal authorities as to the types of legal assistance.

The terms in Russian “юридическая помощь” (yuridicheskaya pomoshch) and “правовая помощь” (pravovaya pomoshch) (both should be translated into English as legal assistance) are often used as synonyms in the countries reviewed in this report.

3.2. “Правовая помощь” (pravovaya pomoshch)
In the countries represented in this report “правовая помощь” is a synonym of the term юридическая помощь (yuridicheskaya pomoshch).

This term, however, has a different meaning

when it comes to the international legal relations where it implies a system of organisational and legal means used by the states to cooperate in the fields of mutual assistance in civil, family and criminal cases that require implementation of procedural actions in more than one country.

This system is based upon bilateral and multilateral mutual legal assistance treaties, which regulate the issues of protection of subjects of law, evaluation of competence of court instances for consideration of disputes of various categories and applicable legal systems, observation of procedural rights of foreigners, stateless persons and persons with multiple citizenship; these treaties regulate also the order of admission of various documents (certificates, diplomas, etc.), execution of court orders, decisions on disputes, order of document transfer, extradition of criminals, etc.¹⁶³

Word-for-word translation of the term “правовая помощь” into English may entail misunderstanding because legal aid means provision of assistance to those who cannot afford legal representation. This type of assistance provides for free consulting and legal representation for those who fall within a certain category. Legal aid is aimed at provision of free access to justice, fair trial, and equality before the law.¹⁶⁴

In this report, the term “правовая (юридическая) помощь” shall be translated into English as legal assistance.

3.3 Legal assistance for human rights violations

Legal assistance for human rights violations is a new concept that appeared in the international law simultaneously with the introduction of the “human rights defender” institution and the “advocacy” system.

¹⁶² Access to Justice and Subsidized Legal Assistance: Analysis of International and Russian Experience. Information package, M.: ОО “Variant”, 2010.-page 288

¹⁶³ <http://dic.academic.ru/dic.nsf/lower/17380>

¹⁶⁴ https://en.wikipedia.org/wiki/Legal_aid, Law Dictionary: What is LEGAL AID? definition of LEGAL AID (Black's Law Dictionary) <http://thelawdictionary.org/legal-aid/>

Although the term “legal assistance for human rights violations” is not used in the documents regulating human rights activities, a number of indications suggest that they do not coincide with the elements that form the basis of the concept of legal assistance traditionally provided by lawyers and legal professionals.

First, this new concept derives from the need for assistance in cases of human rights violations that are not covered by the “traditional” functions of lawyers, such as advising clients as to their legal rights and obligations.¹⁶⁵

Moreover, everyone can implement this right, not just a person possessing the qualifications and powers of a lawyer.¹⁶⁶

Finally, the description of the list of actions¹⁶⁷ covered by the institution of legal assistance as enshrined in the Declaration on Human Rights Defenders, as well as the establishment of a broader legal framework applied to defence and protection,¹⁶⁸ suggests that this document creates more favourable conditions and remedies applicable in the protection of human rights than those provided by the professional standards for lawyers (legal professionals).

Thus, guided by this document, human rights lawyers, as well as other human rights defenders, have the right to:

- Complain, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State;
- Attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

- Offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and,

- Have unhindered access to and communication with international bodies with general or special competence to receive and consider communication on matters of human rights and fundamental freedoms.¹⁶⁹

If the provisions of Article 9 of Declaration on Human Rights Defenders are interpreted in conjunction with Article 11, then the concept of legal assistance provision in cases of violations of human rights and fundamental freedoms embraces both the activities of “legally authorised representatives” and provision of such assistance by other persons who do not necessarily have to meet the qualification requirements for lawyers (legal professionals). It is still important to observe the requirements stating that all those who provide qualified professional legal assistance or other respective consultations concerning human rights and fundamental freedoms should observe national and international professional standards of conduct and ethics.

It should be noted that national legislation, unfortunately, does not always recognise these powers and often limits the range of subjects that can provide legal assistance by introducing, for example, an explicit ban on the provision of legal assistance by civil society organisations and (or) lawyers who are not members of the bar associations.

In the case of Zvozskov et al. v. Belarus, the Human Rights Committee considered the complaint against the refusal to register the Helsinki-XXI human rights association and pointed out that, since the only condition that the charter of the association failed to meet was the national legislation rule depriving NGOs of the right to represent interests and to protect rights of third parties, the Committee found

¹⁶⁵ Article 13 Basic Principles on the Role of Lawyers

¹⁶⁶ Article 9 para 1 Declaration on Human Rights Defenders (1998)

¹⁶⁷ Article 9 para 2, 3, 4 Declaration on Human Rights Defenders (1998)

¹⁶⁸ Article 3 Declaration on Human Rights Defenders (1998)

¹⁶⁹ Ibid Ст. 9, часть 2, 3, 4.

*a violation of the Covenant, and pointed out that the state failed to have put forward any arguments justifying that for the purposes of registration it is necessary to limit the scope of NGOs' activities to representation of interests and protection of rights of NGOs' members only.*¹⁷⁰

4. Guarantees and Immunities

The feature unifying the concepts of guarantees and immunities is the establishment of rules and regulations that enshrine, in the most general terms, the principles ensuring the compliance with the certain obligations. The term guarantees is a generic term in relation to the term immunity; therefore, immunity can be considered a type of guarantee.

At the same time, for the purposes of this report, it is reasonable to separate the concepts of guarantees and immunities; the former are general regulations creating conditions for the implementation of the particular rights and freedoms, while the latter are specific and always focused on ensuring and protecting functions performed by representatives of a particular profession. Moreover, as will be shown below, while general guarantees working under the international legal system of protection of human rights activities should extend to all human rights defenders including human rights lawyers, only lawyers enjoy *de jure* special guarantees and immunities. And, even if these immunities are enshrined in the international law for a broad group of legal professionals¹⁷¹, the national law provides for *de jure* and *de facto* immunities only for lawyers, who are members of the bar associations.

This section will use the terms the general guarantees and the special guarantees. The general guarantees imply the guarantees established for human rights defenders in general, while the special guarantees refer to those embodied

in the professional standards for lawyers (legal professionals)

4.1. General Guarantees for Human Rights Defenders

These guarantees, in the form of the principles underlying the protection of human rights defenders, were first formulated in the OSCE Guidelines (2014). They include the following conditions¹⁷²:

1. Recognition of the need for international protection of human rights defenders: While the responsibility for the protection of human rights defenders rests primarily with States, violations of the rights of human rights defenders are not solely a matter for their internal affairs.
2. Accountability of non-state actors: Non-state actors should respect and recognise the rights of human rights defenders and be guided by international human rights norms in carrying out their activities.
3. Equality and non-discrimination: Human rights defenders shall not be discriminated against because of their work.
4. Conducive legal, administrative and institutional framework: Domestic legal, administrative and institutional frameworks should contribute to creating and consolidating a safe and enabling environment, in which human rights defenders are protected, supported and empowered to carry out their legitimate activities.

¹⁷⁰ «Zvozkov et al. v. Belarus». Communication № 1039/2001, views adopted on 17 October 2006. CCPR/C/88/D/1039/2001.

¹⁷¹ See: Comments on the translation and content of the Basic Principles on the Role of Lawyers (1990).

¹⁷² Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014), pages 8,9

Positive obligations that the States should observe to implement this principle are listed in Article 12 of the Declaration on Human Rights Defenders, which indicates that the state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration. Everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

5. Legality, necessity and proportionality of limitations on fundamental rights in connection with human rights work. States have less discretion when it comes to limiting the rights of human rights defenders, since the right to protect human rights¹⁷³ is important for the implementation of all other rights.¹⁷⁴

4.2. Immunities for Human Rights Defenders

The international law does not provide for any special benefits or privileges for those engaged in the protection and promotion of human rights.

At the same time, the institutions established to monitor the implementation of the commitments on human rights and the situation of human rights defenders, call on the states to “create an environment conducive to the work of human rights defenders, enabling individuals,

groups and associations to freely carry out activities [...] to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights; take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities”.¹⁷⁵ The documents of the UN Human Rights Council emphasise the need to ensure procedural safeguards, including in criminal cases against human rights defenders, to avoid the use of unreliable evidence, unwarranted investigations and procedural delays. In addition, it is recommended to the states to base any provision or decision that may interfere with the enjoyment of human rights, on fundamental principles enshrined in international law so that they are lawful, proportionate, non-discriminatory and necessary in a democratic society.¹⁷⁶

The UN Working Group on Arbitrary Detention (UNWGAD), for example, “subjects interventions against individuals who may qualify as human rights defenders to particular review”.¹⁷⁷ Having recognised the detention of the Belarusian human rights defender Ales Bialiatski as arbitrary, the UNWGAD took into consideration the UN framework on human rights defenders, and noted that:

“[T]here is no immunity for human rights defenders against criminal charges of the kind in this case. However, government action has to respect the exercise of human rights, and Governments have specific duties to protect human rights defenders against different forms of harassment that they may encounter in their activities.

¹⁷³ The right to protect human rights was not included in the list of the basic human rights enshrined by the International Bill of Rights. This right was articulated in the UN Declaration on Human Rights Defenders (1998) and is formulated, for example, by the members of the Human Rights House Network as the Right to be a human rights defender: <http://humanrightshouse.org/>

¹⁷⁴ Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014)

¹⁷⁵ Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

¹⁷⁶ Resolution of the UN Human Rights Council “...Protecting Human Rights Defenders” (2013), A/HRC/22/L.13, pp. 11 c, d.

¹⁷⁷ *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012 (21 November 2012), paragraph 40; *Nasrin Sotoudeh v. Islamic Republic of Iran*, Working Group on Arbitrary Detention, Opinion No. 21/2011, U.N. Doc. A/HRC/WGAD/2011/21 (2011), 27 February 2012, paragraph 29.

When there are claims of human rights violations in this context, including a pattern of harassment, domestic authorities and international supervisory bodies should apply the heightened standard of review of government action.”¹⁷⁸

4.3. Special Immunities and Guarantees for legal professionals (lawyers)

4.3.1. Immunities for legal representatives (legal professionals, lawyers)

These are the special benefits and privileges that are traditionally enshrined in the national law for the exemption of lawyers and legal professionals from the certain duties and responsibilities, as well as to provide for the special procedure for prosecution and proceedings against them enabling them to implement their special status.

Most of the immunities have been reflected in the international legal standards for lawyers (legal professionals). The most important of them are as follows:

- Civil and penal immunity for relevant statements made by lawyers in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority;¹⁷⁹
- Immunities ensuring the confidentiality of the lawyer-client relationship: a ban on obtaining client-lawyer privileged information from lawyers, in particular, through questioning them as witnesses, searches and seizures of documents and other information, and perusal of correspondence¹⁸⁰; and
- Immunities protecting lawyers against undue prosecution.¹⁸¹

Most of the immunities listed are enshrined in the national legislation, but are not always ensured in practice, as shown in Section III of this report.

4.3.2. Guarantees for legal representatives (legal professionals, lawyers)

These are conditions, means, and measures aiming to ensure the implementation, protection and defence of the certain rights and (or) regulations. The guarantees are provided for in national and international law.

In some cases, the guarantees and immunities overlap and (or) supplement each other.

The following safeguards were discussed in this report:

- Unrestricted and immediate access to the client;
- Guarantees for lawyers providing free legal aid;
- Confidentiality;
- Access to information and documents;
- Guarantees for disciplined lawyers;
- Guarantees of lawyers’ security: working in an environment free from threats, intimidation or intervention. Protection of lawyers at risk by the authorities; and
- Protection and representation by lawyers’ professional association.

178 Alexander Belyatsky v. Belarus, UN Working Group on Arbitrary Detention, Opinion 39/2012 U.N. Doc A/HRC/WGAD/2012/39 (2012), paragraph 45.

179 Para 20 of the Basic Principles on the Role of Lawyers (1990)

180 Para 5, 6, 7 of Principle I of Recommendations N Rec (2000)21 of the Committee of Ministers, paras 16, 21, 22, of the Basic Principles on the Role of Lawyers (1990), certain norms are also enshrined in the national legislation and some legal systems.

181 Para 2, 3 of Principle VI of Recommendations N Rec (2000)21 of the Committee of Ministers, para 16, 27, 28 of the Basic Principles on the Role of Lawyers (1990), the legislation of the Russian Federation provides for the special procedure for instituting criminal proceedings against a lawyer.

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