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OPINION ON THE LAW OF UKRAINE NO. 4547-IX "ON AMENDMENTS TO THE CODE OF UKRAINE ON ADMINISTRATIVE OFFENCES, THE CRIMINAL CODE AND THE CRIMINAL PROCEDURE CODE OF UKRAINE TO ENSURE THE PROTECTION OF GUARANTEES OF ADVOCACY" (BILL NO. 12320 OF 16 DECEMBER 2024)

Ukraine

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EXECUTIVE SUMMARY AND KEY RECOMMENDATION

The protection of lawyers is essential to upholding the rule of law, ensuring access to justice, and safeguarding human rights. The 1990 United Nations (UN) Basic Principles on the Role of Lawyers emphasize that everyone must have access to independent legal services and that lawyers must be free to perform their duties without intimidation, interference, or harassment. The newly adopted Council of Europe Convention for the Protection of the Profession of Lawyer aims to strengthen the protection of the profession of lawyer and the right to practice this profession with independence and without discrimination, improper hindrance or interference, or being subjected to attacks, threats, harassment or intimidation. Without such protection, both clients' right to representation and the integrity of the justice system may be seriously threatened.

At the same time, the right to freedom of expression and to receive and impart information is a key human right because of its fundamental role in underpinning democracy. It is enshrined in several key human rights documents, including Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and OSCE human dimension commitments. The full enjoyment of this right, from which freedom of the media is derived, is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can voice their opinions, while bringing visibility to marginalized or underrepresented groups. Any restriction on this right must meet the strict three-part test under Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR, namely that it must be prescribed by law – and as such clearly defined and foreseeable, pursue one or more legitimate aims listed exhaustively in the respective treaty/convention and be necessary in a democratic society and respect the principle of proportionality. While underlining the importance of protecting the right to free expression and access to information, it should also be balanced with the protection of lawyers and legitimate public interests as stipulated by relevant international human rights treaties. In this respect, restrictions on media content or freedom of expression for the purpose of protecting lawyers should only be permissible if, in individual cases, the expression causes or is intended and likely to cause substantial harm to the lawyer. Statements of the media or individuals intended as part of a good faith discussion or public debate with a view to act in the public interest by identifying the lawyer-client relationship, if unlikely to cause substantial harm, contribute to promoting transparency, accountability and the rule of law.

The stated objective of the Law, that was adopted by the Verkhovna Rada of Ukraine on 16 July 2025 although not promulgated by the President, namely to strengthen the protection of lawyers and uphold the independence of the legal profession, is generally consistent with the international standards stemming from the UN Basic Principles on the Role of Lawyers and the Council of Europe Convention for the Protection of the Profession of Lawyer, to ensure that legal professionals can perform their duties with independence and without obstruction, improper hindrance or interference, and without being subjected to attacks, threats, harassment or intimidation.

However, the wording of Article 185[16] of the Code on Administrative Offences, which imposes penalties for "identifying a lawyer with a client", risks overreaching in a way that could compromise the right to freedom of expression and information guaranteed

under Article 19 of the ICCPR and Article 10 of the ECHR. The provision's broad and vague terms, especially regarding public or media commentary, may have a chilling effect on freedom of expression, discouraging legitimate discussion about matters of public interest involving lawyers and their clients. While the objective of protecting lawyers from bias, harassment, intimidation or threats or attacks is legitimate, restrictions on expression must meet the above-mentioned strict three-part test. As currently drafted, Article 185[16] of the Code on Administrative Offences could unduly limit the freedom of expression. More specifically, pursuing the legitimate aim of protecting the profession of lawyer, **Article 185[16] of the Code on Administrative Offenses does not satisfy the requirement that any interference with freedom of expression be provided by law and necessary in a democratic society**. **The introduction of administrative liability for the mere fact of "identifying" a lawyer with their client, regardless of whether such identification intended to cause harm, risks creating undue restrictions on public discourse and a chilling effect on the exercise of the right to freedom of expression.** More narrowly defining and clarifying its scope and intent would be essential to balance lawyer protection with the preservation of free expression.

It is also questionable whether the amendments to Article 397 of the Criminal Code, which criminalize interference in the activities of lawyers, complies with the requirement that the constitutive elements of criminal offences be sufficiently precise to ensure foreseeability of when liability will arise. The vague formulation of the proposed criminal offences risks contravening the principles of legality and predictability of criminal law. Even if the issue of foreseeability were disregarded, the introduction of the amendments may not provide any real added value.

In the circumstances, **it would be advisable to engage in more in-depth and inclusive discussions with representatives of the legal profession, lawyers, other providing legal assistance, civil society representatives to discuss and design a more comprehensive framework of policy and legal measures to ensure the effective protection of lawyers and others providing legal assistance, including in the context of the revision of the Law on the Bar, as required pursuant to the European Integration Roadmap on the Rule of Law.**

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 30 September 2025, the Chairperson of the Committee on Freedom of Speech of the Verkhovna Rada of Ukraine sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request to review the Law of Ukraine no. 4547-IX "On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code and the Criminal Procedure Code of Ukraine to Ensure the Protection of Guarantees of Advocacy" as adopted on 16 July 2025 by the Verkhovna Rada of Ukraine, which has not been promulgated by the President (hereinafter "the Law") (or Bill no. 12320 of 16 December 2024).
2. On 3 October 2025, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of the Law with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.[1]

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating freedom of expression or the protection of lawyers.
5. The Opinion raises key issues and provides indications on areas of concern. In the interest of conciseness, it focuses more on provisions that require amendments or improvements rather than on the positive aspects of the Law. The ensuing legal analysis is based on international and regional human rights standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always

1 See especially *OSCE Decision No. 7/08 Further Strengthening the Rule of Law in the OSCE Area* (2008), point 4, where the Ministerial Council *"[e]ncourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law [on the issue of] independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention […]"*. See also the CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), CSCE/OSCE, 29 June 1990), para. 9.1; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (Moscow Document), CSCE/OSCE, 3 October, 1991, paras. 9.1 and 26; and CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era (Budapest Document), CSCE/OSCE, 21 December 1994, Chapter VIII, para. 36. See also OSCE Ministerial Council Decision No. 3/18, "Safety of Journalists", 12 December 2018, p. 3, which calls upon OSCE participating States to *"[b]ring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference (…).*"

to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[2] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[3] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

7. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Ukraine in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

8. While the Law is intended to strengthen the protection of lawyers and safeguard the conduct of legal representation, the proposed amendments also carry significant implications for the enjoyment of the right to a fair trial, the exercise of freedom of expression, and the right to respect for private life. These rights are integral to the rule of law and are protected under a range of international obligations and standards and OSCE human dimension commitments.

1.1. Regarding the Freedom of Expression

9. The right to freedom of expression and to receive and impart information is a human right crucial to the functioning of a democracy and is central to achieving other human rights and fundamental freedoms. The full enjoyment of this right is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can voice their opinions, while bringing visibility to marginalized or underrepresented groups. While underlying the importance of protecting the right to free expression and access to information, it should also be balanced with the protection of reputation and legitimate public interests as stipulated by international human rights treaties.

10. The right to freedom of expression and to receive and impart information is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR)[4] and is guaranteed by Article 19 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR), which provides that *"everyone shall have the right to hold opinions without interference"* and that *"everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"*.[5] In the General Comment No. 34 on Article 19

2 See *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine acceded to the Convention on 12 March 1981.
3 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
4 See the *Universal Declaration of Human Rights (UDHR)*.
5 See the *UN International Covenant on Civil and Political Rights* (ICCPR), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Ukraine ratified the ICCPR on 12 November 1973.

of the ICCPR, the UN Human Rights Committee further elaborates that *"[f]reedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights."* The scope of Article 19 of the ICCPR embraces even expression that *"may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20"*.[6]

11. Article 10 of the Council of Europe (CoE) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[7] the case law of the European Court of Human Rights (ECtHR) in the field of freedom of expression and freedom of the media, and other Council of Europe (CoE) instruments are also of relevance for the preparation of this Opinion.[8]

12. The right to freedom of expression is not absolute and it can be limited under specific circumstances. Restrictions on the right to freedom of expression must be compatible with the requirements set out in Article 19 (3) of the ICCPR and in Article 10 (2) of the ECHR, that is, they must be provided by law (test of legality), pursue one of the legitimate aims listed exhaustively in the respective treaty/convention[9] (test of legitimacy), be necessary and proportionate, and constitute the least intrusive measure among those effective enough to reach the designated objective (test of necessity and proportionality). In addition, they must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR[10]). The requirement of legality of restrictions to freedom of expression means that the law concerned must be precise, certain and foreseeable, and must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly.[11] Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need(s) on which they are predicated. In addition, Article 20 of the ICCPR prohibits expressions constituting propaganda for war and any advocacy of national, racial or religious hatred that amounts to incitement to discrimination, hostility or violence.[12]

13. At the OSCE level, there are a number of commitments in the area of freedom of expression and access to information. In particular, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 (1990 Copenhagen Document) proclaims the right to everyone to freedom of expression and states *that "[t]his right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are*

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6 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 11.

7 See the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), entered into force on 3 September 1953. Ukraine ratified the ECHR on 11 September 1997.

8 See, for example, 2025 *Guide to Article 10 of the Convention – Freedom of expression*.

9 For Article 19 (3) ICCPR: *"(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*". For Article 10(2) ECHR: "*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*."

10 Ukraine ratified the Protocol 12 to the ECHR on 1 July 2006.

11 See the UN Human Rights Committee, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25, which states: "*a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.*" See also, e.g., Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, para. 58. In addition, see European Court of Human Rights, *The Sunday Times v. the United Kingdom (No. 1)*, no. *6538/74*, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct, by being able to foresee what is reasonable and what type of consequences an action may cause*."

12 See ICCPR, art. 20.

prescribed by law and are consistent with international standards".[13] OSCE participating States also reaffirmed *"the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinion"* in paragraph 24 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991 Moscow Document).[14] Moreover, in 1994, OSCE participating States proclaimed that "*freedom of expression is a fundamental human right and a basic component of a democratic society*" committing to "*take as their guiding principle that they will safeguard this right*" and emphasizing in this respect, that "*independent and pluralistic media are essential to a free and open society and accountable systems of government*".[15]

14. In its Decision 3/18, adopted on 7 December 2018, the OSCE Ministerial Council called upon OSCE participating States to *"1. Fully implement all OSCE commitments and their international obligations related to freedom of expression and media freedom, including by respecting, promoting and protecting the freedom to seek, receive and impart information regardless of frontiers; 2. Bring their laws, policies and practices, pertaining to media freedom, fully in compliance with their international obligations and commitments and to review and, where necessary, repeal or amend them so that they do not limit the ability of journalists to perform their work independently and without undue interference (…)."*[16]

1.2. Regarding the Protection of Lawyers and Fair Trial Guarantees

15. The protection of lawyers is fundamental to the rule of law, ensuring they can carry out their professional duties independently and without fear. International human rights instruments consistently affirm the right to legal assistance as a fundamental component of the right to a fair trial. Article 14 (3) (d) of the ICCPR and Article 6 (3) (c) of the ECHR recognize the right of individuals to defend themselves through legal assistance. Other provisions of the ICCPR and of the ECHR, although not specific to lawyers, provide essential protections that apply equally to lawyers, including Article 17 of the ICCPR and Article 8 of the ECHR on the right to privacy which protects the confidentiality of lawyer-client communications, while other rights, such as freedom of expression (Article 19 ICCPR and Article 10 ECHR[17]) and association under Articles 19 and 22 ICCPR (and Articles 10 and 11 ECHR), apply equally to lawyers, ensuring they can speak on matters of public interest or participate in professional associations. Building on these guarantees, the CoE Committee of Ministers' Recommendation R(2000)21 calls on member States in Principle IV to ensure that *"[a]ll necessary*

13 See OSCE *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, (1990 OSCE Copenhagen Document),* 29 June 1990.

14 See CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE*, (Moscow, 3 October, 1991).

15 See CSCE/OSCE, *CSCE Budapest Document 1994, Towards a Genuine Partnership in Era* (Budapest, 21 December 1994), Chapter VIII, para. 36.

16 See *OSCE Ministerial Council Decision No 3, Safety of Journalists*, 12 December 2018, p. 3.

17 It is noted that the ECtHR affords a particularly high level of protection to the freedom of expression of lawyers, especially when their speech occurs in the performance of professional duties or concerns matters of public interest; see e.g., ECtHR, *Morice v. France*, no. 29369/10, 2015 where the Court held that even severe criticism of judges by a lawyer is protected under Article 10 of the Convention, provided it rests on a sufficient factual basis and does not amount to gratuitous personal insult; *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, 25 June 2020, where the Court found a violation of Article 10 where disciplinary sanctions were imposed on a lawyer for criticizing the judiciary, emphasizing that such restrictions not only curb lawyers' freedom of expression but also impair the public's right to receive information; *Pisanski v. Croatia*, no. 27037/14, 15 September 2022, where a fine imposed on a lawyer for employing irony and sharp language in an appeal was deemed disproportionate, as the remarks were contextually relevant and did not undermine judicial authority; *Simić v. Bosnia and Herzegovina*, no. 39764/20, 17 October 2023, where the Court reiterated that lawyers, as essential actors in the administration of justice, must be able to engage in public debate without fear of reprisal, provided they act in good faith and respect the dignity of the profession. Although this case-law concerns lawyers' criticism of judicial authorities, the Court's reasoning also implies that comparable protection may extend to critical statements by other actors, such as journalists, about judicial authorities or lawyers where such speech contributes to discussion on matters of public importance.

measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers".[18]

16. The protection of lawyers is further reinforced in the UN Basic Principles on the Role of Lawyers, which state that *"[a]ll 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"*.[19] Recognizing the essential role of the legal profession, the UN Basic Principles on the Role of Lawyers establish several key guarantees for the independence of lawyers in the discharge of their professional duties. These include, among others, the confidentiality of the lawyer-client relationship (Article 22) and civil and penal immunity for statements made in good faith as part of legal proceedings (Article 20). The Principles also call upon state authorities to protect lawyers and "*ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference*" and "*shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics*" (Article 16). Moreover, "*where the security of lawyers is threatened as a result of discharging their functions*", authorities must provide them with adequate protection (Article 17).[20] Article 18 explicitly prohibits the identification of lawyers with their clients or their clients' causes.[21] This prohibition is also enshrined in the International Bar Association Standards for the Independence of the Legal Profession.[22]

17. In addition, the UN Declaration on Human Rights Defenders (1998) extends protection to lawyers involved in defending human rights, recognizing their right to access justice and communicate with international bodies without reprisals.[23] Reports of the UN Special Rapporteur on the Independence of Judges and Lawyers continue to highlight widespread challenges, such as arbitrary arrests, surveillance, and disbarment of lawyers, and call on states to ensure institutional independence for the legal profession and to conduct prompt investigations into attacks.[24]

18. In addition, on 12 March 2025, the CoE has adopted the Convention for the Protection of the Profession of Lawyer in response to growing concerns about harassment, threats and interference faced by lawyers in the exercise of their professional duties.[25] While it is noted that Ukraine has not yet ratified this Convention, the Convention nonetheless may serve as useful guidance for developing the national legal framework to offer an effective protection of lawyers reflecting evolving international and regional standards. Key provisions cover the entitlement to practise, freedom of expression, the right of lawyers and their professional associations to operate without hindrance, and obligations on States to protect lawyers from violence or improper disciplinary action.[26] The Convention is supplemented by its Explanatory Report, which provides detailed guidance on its interpretation and implementation.[27] Article 6 (5) of the Convention

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18 See the Committee of Ministers' *Recommendation R(2000)21*, Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies.
19 See *UN Basic Principles on the Role of Lawyers* (1990).
20 See *UN Basic Principles on the Role of Lawyers* (1990), Articles 16 and 17.
21 See *UN Basic Principles on the Role of Lawyers* (1990), Article 18.
22 See, International Bar Association, Standards for the Independence of the Legal profession, see Rights and Duties of Lawyers, para. 7, which provides: "*The lawyer is not to be identified by the authorities or the public with the client or the client's cause, however popular or unpopular it may be*".
23 See *UN Declaration on Human Rights Defenders* (1998).
24 See, for example, Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite Justice is not for sale: the improper influence of economic actors on the judiciary", *A/79/362*, 23 October 2024.
25 See the Council of Europe *Convention for the Protection of the Profession of Lawyer*, 12 March 2025.
26 This view is shared by the Council of Bars and Law Societies of Europe (CCBE), which emphasizes that the Convention's purpose is to reinforce the rule of law, noting that growing attacks on lawyers across Europe undermine this goal. The CCBE further underscores that ensuring the safety and independence of the legal profession is essential to safeguarding citizens' effective access to justice.
27 See *Explanatory Report to the Council of Europe Convention for the Protection of the Profession of Lawyer*.

provides that "*Parties shall ensure that lawyers do not suffer adverse consequences as a result of being identified with their clients or their clients' cause"*. Article 6 (5) and the Explanatory Note specify that the state's obligation to protect lawyers from adverse consequences resulting from the identification of a lawyer with their client shall be balanced with the right to freedom of expression of others as protected by the ECHR and domestic law.[28] Article 9 (4) further requires State Parties to "*ensure that lawyers and their professional associations are able to carry out their professional activities and to exercise their rights under Article 7 of this Convention without being the target of: i) any form of physical attack, threat, harassment or intimidation; or ii) any improper hindrance or interference"*.

19. In addition, the OSCE participating States also reaffirmed their commitment to safeguarding the independence and integrity of the legal profession through key OSCE commitments. In the 1990 OSCE Copenhagen Document, they declared that "*the independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice*".[29] Similarly, in the 2006 Brussels Declaration on Criminal Justice Systems, OSCE participating States emphasized that all necessary measures should be taken to respect, protect, and promote the freedom to exercise the legal profession without discrimination or improper interference; that lawyers should not face sanctions or pressure when acting in accordance with professional standards; that they must have access to clients, including those deprived of liberty, to provide private counsel and representation; and that the confidentiality of the lawyer–client relationship must be upheld, with exceptions permitted only if compatible with the rule of law.[30]

1.3. Regarding the Right to Protection of Private Life

20. The public "association" of a lawyer with a client's actions or case may, in certain circumstances, infringe upon the lawyer's private and professional life, which is protected under Article 17 of the ICCPR and Article 8 of the ECHR. Under Article 8 of the ECHR, the right to respect for private life extends to an individual's professional reputation and personal integrity.

2. BACKGROUND, CONTENT OF THE LAW AND JUSTIFICATIONS

21. The protection of lawyers is fundamental to ensuring the rule of law, access to justice and safeguarding fundamental human rights. The Basic Principles on the Role of Lawyers affirm that in order for all persons to enjoy their human rights and freedoms, whether economic, social and cultural, or civil and political, it is necessary that everyone has effective access to legal services provided by an independent legal profession. These Principles also require that lawyers be able to carry out their professional functions without intimidation, hindrance, harassment or improper interference, including freedom of movement, communication and affiliation. Without such protection, the ability of clients to secure representation is undermined and, more broadly, the integrity of the justice system itself is put at grave risk.

28 See, Council of Europe, *Convention for the Protection of the Profession of Lawyer*, art. 6(5),12 March 2025; and *Explanatory Report to the Council of Europe Convention for the Protection of the Profession of Lawyer*.
29 See the *1990 OSCE Copenhagen Document*, para. 5.13.
30 See the Ministerial Document No.4/06, Brussels, *Declaration on Criminal Justice Systems*, Final Documents, 14th OSCE Ministerial Council Brussels, 4 and 5 December 2006.

22. The Constitution of Ukraine enshrines the importance of the legal profession in a state governed by the rule of law. Articles 59 and 64 protect the right to professional legal assistance as a non-derogable right, and Article 131-2 guarantees the independence of the Bar.[31] The Law of Ukraine No. 5076 "on the Bar and Practice of Law" further regulates the legal profession by providing the requirements to become a lawyer, their rights and duties, and the organizational structure and functions of the Bar.[32] Notably, the said Law explicitly prohibits the identification of lawyers with their clients (Article 23.16).[33] It also emphasizes the state's obligations to protect lawyers, stipulating that "*the life, health, honor and dignity of an advocate and of his/her family members and their property are under the protection of the state, and any encroachment thereupon shall entail liability established by law*" (Article 23.6), and that "*an advocate is guaranteed the right to the measures of safety and protection in respect of him/her while he/she is participating in criminal proceedings*" (Article 23.7).[34]

23. Law no. 4547-IX "On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code and the Criminal Procedure Code of Ukraine to Ensure the Protection of Guarantees of Advocacy" under review (hereinafter "the Law") was adopted in its second reading by the Verkhovna Rada of Ukraine on 16 July 2025, but has yet to be signed and promulgated by the President.

24. The amendments that would be introduced by the Law would create an administrative offence for identifying a lawyer with a client (proposed amendments to Article 185^{16} of the Code on Administrative Offences) and would expand Article 397 of the Criminal Code by defining specific forms of interference in the activities of a lawyer and assigns jurisdiction over such criminal offenses to the State Bureau of Investigations.

25. Proposed Article 185^{16} of the Code on Administrative Offence introduces administrative liability for "*publicly, including through the media, journalists, civil society organizations, trade unions, digital platforms, social networks, internet resources, identifying a lawyer with a client to whom such lawyer provides professional legal assistance, where such identification is made without the intent to obstruct the lawyer's exercise of their powers under the law to provide defence, representation, or other forms of legal assistance to the client*". Thus, the provision makes it clear that the offense does not require the intent to obstruct a lawyer's lawful duties to defend, represent, or otherwise assist a client. The notion of "Identification" is further elaborated in a note as "association, linking" and administrative liability will be incurred where such identification "*creates a biased attitude towards the lawyer, indicates personal involvement of the lawyer in the client's case, affects the independent status of the lawyer and/or exerts negative pressure during the exercise of legal practice, and/or violates the guarantees of legal practice, and/or impedes the exercise of the rights of the lawyer*" provided for by the Law on the Bar.

26. This administrative offence would be punishable by fines ranging from 200 to 300 non-taxable minimum incomes for citizens (i.e., 3,400 to 5,100 UAH, approximately 70 to 105 EUR) and from 300 to 400 non-taxable minimum incomes for officials (i.e., 5,100 to 6,800 UAH, approximately 105 to 140 EUR). If the same person commits this violation again within a year after being penalized, the fine increases to 600–800 non-

31 See Constitution of Ukraine, Articles 59, 64 and 131.2.
32 See, Law of Ukraine of 5 July 2012, No 5076, "on the Bar and the Practice of Law", as last amended on 10 October 2024; see <About the Bar and the Bar Association... | dated 05.07.2012 No. 5076-VI> (*in Ukrainian*)
33 *Ibid.* Article 26.16.
34 *Ibid,* Articles 26.6 and 26.7.

taxable minimum incomes (i.e., 10,200 to 13,600 UAH, approximately 210 to 280 EUR).[35]

27. The proposed amendments to Article 397 of the Criminal Code are concerned with interference with the lawful activities of a defence lawyer, including when committed by an official. More specifically, the Law seeks to amend and specify Article 397 (1) to cover the "*illegal obstruction*" of a lawyer's arrival at a court, prosecution authorities and other enumerated places where lawyers might conduct their activities; "*illegal obstruction of a meeting between a lawyer and a person to whom legal assistance is provided*"; and "*any other intentional obstruction of the professional activities of a lawyer and the exercise of his powers to defend or represent a person*". Furthermore, the Law amends Article 397 (2) so that it no longer targets actions committed by an official but those actions committed by others involving interference with confidential communications, entry into premises, inspections, searches (including personal ones) and demanding or seizing documents leading to access by unauthorized persons to lawyer-client privilege and/or its disclosure. The Law also introduces two new parts (Articles 397 (3) and 397 (4)). The first would criminalize any form of influence exerted on a lawyer with the aim of obstructing the performance of his or her statutory powers to defend, represent, or otherwise assist a client, excluding, however, conduct already covered under Articles 398–400 of the Criminal Code (such as threats, violence, or property damage) (Article 397 (3)). The second would address the conduct covered under Article 397 (1), (2) and (3) when committed by an official using his or her official position (Article 397 (4)).

28. The penalties for these criminal offences, when committed by individuals, would include a range of sanctions, including fines varying in amount from 200 to 1,000 non-taxable income (i.e., 3,400 UAH to 17,000 UAH, approximately 70 to 350 EUR), correctional labour for up to two years, probation for up to three years, or restriction of liberty for up to three years. When these criminal offences are committed by an official using his or her official position, the range of penalties would include fines from 700 to 1,500 non-taxable income (i.e., 11,900 UAH to 25,500 UAH, approximately 245 to 520 EUR), probation for up to three years, or restriction of liberty for up to three years. The Law also provides for the possibility to deprive state officials convicted of such criminal offences of the right to hold certain positions or engage in certain activities for up to three years.

29. The government justifies the adoption of this Law by emphasizing the growing systemic violations of guarantees of legal practice in Ukraine, particularly the unlawful identification of lawyers with their clients and interference in their professional activities, especially in the context of criminal proceedings related to the war caused by the Russian Federation's invasion of Ukraine. The Explanatory Note argues that such actions undermine constitutional rights to professional legal assistance, violate the independence of the legal profession, and contradict international standards, including the UN Basic Principles on the Role of Lawyers. The Explanatory Note further stresses that despite a sharp rise in offenses against lawyers, almost none have resulted in effective investigation or accountability, largely due to vague legal definitions and inadequate enforcement mechanisms. Therefore, the government argues that legislative intervention is necessary to clearly define forms of interference, introduce administrative and criminal liability, and create an effective mechanism to protect lawyers' rights and ensure individuals' access to justice.

35 See the *non-taxable minimum income* of citizens in 2025 is set at UAH 17. This is defined in paragraph 5 of subsection 1 of section XX of the Tax Code of Ukraine.

30. The stated objective of the proposed amendments, namely, to strengthen the protection of lawyers, is consistent with the international standards and recommendations to ensure the independence and security of legal professionals,[36] all the more in the context of instances of unlawful interference by law enforcement bodies, including wiretapping or searches conducted in violation of Article 8 of the ECHR.[37] Lawyers must be able to perform their duties free from undue public pressure, interference, or reputational harm that could arise from being publicly associated with the actions or identity of their clients. Proposed Article 185[16] of the Code on Administrative Offences appears to pursue this legitimate objective by prohibiting public identification of a lawyer with a client, thereby seeking to protect lawyers from biased public perception or unwarranted personal attacks that could compromise their impartiality or professional standing. From this perspective, the provision aims to preserve the ability of lawyers to provide effective and independent representation, which in turn safeguards the broader guarantees of defence and equality of arms within judicial proceedings. Similarly, Article 397 of the Criminal Code aims to strengthen the protection of the right to a fair trial and the right to respect for private life, home, and correspondence, particularly by safeguarding lawyers' access to courts, the confidentiality of lawyer-client communications, and the protection of professional privilege. In this respect, it is noteworthy that the CoE Convention for the Protection of the Profession of Lawyer also contains guarantees related to access to clients and courts, the confidentiality of communications, and protection against interference with professional activities, as set out in its Articles 6 and 9.

31. Nevertheless, the proposed amendments raise some concerns in terms of their substance and formulation that may undermine its stated purpose. It is important that any legislative or regulatory measure introduced with the stated aim of safeguarding the legitimate interest of lawyers not to be unjustly identified with their clients be formulated with due care and in full compliance with the principles of legality, legitimacy, necessity, and proportionality. Such measures must be narrowly tailored to pursue a legitimate aim and avoid imposing undue restrictions on other fundamental rights and freedoms. In particular, where the proposed provision may intersect with the right to freedom of expression, as protected under Article 19 of the ICCPR, Article 10 of the ECHR and Article 34 of the Constitution of Ukraine, it is essential to ensure a proper balance between the protection of the professional independence and reputation of lawyers, on the one hand, and the safeguarding of freedom of expression and public debate, on the other (see Section 4 below). Article 6 (5) of the CoE Convention for the Protection of the Profession of Lawyers underscores the necessity of maintaining such a balance. The Convention does not prohibit the identification of a lawyer with their client or public commentary concerning such matters *per se*, but rather seeks to prevent any negative or prejudicial consequences arising from such identification. Consistent with this approach, the relevant provisions should not be interpreted or applied in a manner that unduly restricts the exercise of freedom of expression.

32. In sum, while the Law is intended to strengthen guarantees for lawyers and protect the independence of the legal profession, which constitutes a legitimate objective, it must be carefully balanced with the right to freedom of expression, while also considering potential implications for the enjoyment of the right to a fair trial and the right to respect for private life.

36 See Council of Europe, *Convention for the Protection of the Profession of Lawyer*, Article 6.5.
37 See ECtHR, *Denysyuk and Others v. Ukraine*, nos. 22790/19 and 3 others, 13 February 2025.

3. PERSONAL SCOPE OF THE PROTECTION FORESEEN IN THE LAW

33. The wording of Articles 185[16] of the Code on Administrative Offenses only refers to "lawyers". The amendments foreseen to Article 397 of the Criminal Code, contrary to the existing wording of the same provision, no longer mention potential interferences in the activities of a representative providing legal assistance who may not necessarily qualify as a "lawyer", thereby limiting the scope of the protection only to "lawyers". This appears to unduly restrict the category of persons entitled to protection, thereby excluding other individuals who may lawfully provide defence or legal assistance, such as certain legal representatives or advisers, civil society organizations if they are competent under the Ukrainian legal framework to represent individuals before courts, or close persons acting in such capacity. Should other persons be considered competent under the domestic legal framework to represent litigants before the courts although not qualifying as "lawyer", they should also benefit from certain protection.[38] Otherwise, this could have serious implications for the protection of those who provide assistance by acting as human rights defenders or through a civil society organization. This restrictive approach risks contravening the principle of equality before the law and equal access to legal protection, as well as international standards requiring that all persons engaged in the defence function enjoy adequate safeguards from interference, intimidation, or harassment.[39]

34. **Therefore, should amendments be considered in this field, it is recommended to ensure that the personal scope of the protection is not limited to "lawyers" but also include all persons engaged in the legal defence functions, as well as persons employed or engaged by lawyers to assist them insofar as they contribute directly to the carrying out of the professional activities of those lawyers.**

4. IDENTIFYING A LAWYER WITH A CLIENT (PROPOSED ART. 185[16] OF THE CODE ON ADMINISTRATIVE OFFENSES)

35. As the ECtHR has emphasized, the protection of the freedom of expression is "*one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man*".[40] It enables individuals, the media and civil society to exchange information and ideas, to hold those in power to account, and to participate meaningfully in public debate. In the context of legal proceedings and legal representation, the ability of the media or individuals to publish or communicate information of public interest, which may include identifying the lawyer representing a client, plays a crucial role in transparency, in enabling scrutiny of the justice system, and in safeguarding access to justice. Unless an issue of translation, the current wording is so broad and vague that it may mean a prohibition of disclosing who represents a person in court; restricting such disclosures may hinder the public's capacity to understand the legal process and curtail the press and the media's role as a "public watchdog" in holding institutions accountable.[41] In this respect, any interference with the right to impart information must satisfy the strict three-part test set out in Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR (i.e., be prescribed by law, pursue a

38 See e.g., ECtHR, *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, 4 February 2020, paras. 137.
39 See *United Nations Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Principles 16 and 18.
40 See, for example, ECtHR, *Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976, para. 49.
41 See, for example, ECtHR, *Bladet Tromsø and Stensaas v. Norway*, no. 21980/93, 20 May 1999, para. 59; see also ECtHR, *Thorgeir Thorgeirson v. Iceland*, no. 13778/88), 25 June 1992, para. 63.

legitimate aim, and be necessary in a democratic society and respect the principle of proportionality – see para. 12 above).

36. While underlining the importance of protecting the right to free expression and access to information, it should also be balanced with the protection of lawyers and legitimate public interests as stipulated by relevant international human rights treaties. Lawyers should be effectively protected against harassment, bullying and other types of verbal attacks because of their clients. In this respect, restrictions on media content or freedom of expression for the purpose of protecting lawyers should only be permissible if, in individual cases, the expression identifying a lawyer with their clients threatens to cause substantial harm to the lawyer or is intended and likely to cause such harm. Statements of the media or individuals intended as part of a good faith discussion or public debate with a view to act in the public interest by identifying the lawyer-client relationship, if unlikely to cause substantial harm, contribute to promoting transparency, accountability and the rule of law.

37. Given the potential of the proposed Article 185[16] of the Code on Administrative Offenses to interfere with the exercise of the right to freedom of expression of others, it is necessary to consider whether it is sufficiently prescribed by law, has a legitimate aim and is necessary in a democratic society, each of which requirements must be fulfilled in order to preclude it from giving rise to a violation of that right.

4.1. Prescribed by Law

38. The requirement that any restrictions on freedom of expression be "prescribed by law" not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question. While acknowledging that absolute precision is not possible and that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice,[42] laws must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.[43] This also means that the law must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.[44] In particular, the law must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.[45]

39. While the new provision of the Code on Administrative Offences clarifies that identification may occur publicly, through media, journalists, associations, or online platforms, and even "*without the intention of obstructing the lawyer's performance of their statutory powers to defend, represent, and provide other types of legal assistance*

42 See, for example, ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 109. See also ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131, where the Court underlined that: "*A norm could not be regarded as a "law" unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable.*"

43 See, UN HRC, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25; See also, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010; *Kudrevičius and Others v Lithuania* [GC], no. 37553/05, 15 October 2015. See also *Guidelines on Freedom of Peaceful Assembly*, para. 23;. See also ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, paras. 48-49; and *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131.

44 See e.g., Venice Commission, *Rule of Law Checklist*, CDL-AD(2016)007, para. 58. In addition, see ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. *6538/74*, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct," by being able to foresee what is reasonable and what type of consequences an action may cause*."

45 See, UN HRC, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25

to the client", there remain significant concerns regarding the clarity and foreseeability of Article 185[16] of the Code on Administrative Offences.

40. First, there is considerable uncertainty as to whether those who may be liable and sanctioned must themselves have made the identification of a lawyer with a client, or whether liability could arise from others' interpretations or republications of their statements. The current wording, which focuses on the fact of identification through media or other channels, risks attributing liability to individuals even where their original communication did not intend to be further disseminated or disclosed or directly cause such identification. Similarly, if someone makes a statement identifying a lawyer with his/her client, and another person later republishes it through the means listed in Article 185[16], it remains unclear whether liability would fall on the original speaker, the republisher, or both. Moreover, the fact that intent is irrelevant to the determination of liability broadens even more the scope for potential administrative liability.

41. Second, the structure of the definition of "identification" is unclear, particularly whether its various elements, such as creating a "biased attitude", indicating "personal involvement", affecting "independent status", and so forth, are cumulative or alternative factors to be considered to establish liability. As a result, a person cannot really know what would be the circumstances in which a particular expression relating to a lawyer would result in the commission of the proposed administrative offence.

42. Third, the inclusion of "*personal involvement of the lawyer in the client's case*" as a consequence flowing from identification appears unclear (e.g. what exactly could constitute such "personal involvement"), redundant and may be applied unpredictably, while terms like "biased attitude" and "negative pressure" are vague and may be considerably subjective, leaving individuals unable to foresee when an expression might constitute an offence.

43. Lastly, notions such as affecting "*the independent status of the lawyer*" or violating "*the rights and guarantees of legal practice*" are imprecise and difficult to assess, given their broad legal references.

44. Thus, taken both individually and cumulatively, the constitutive elements of the administrative offence in the proposed Article 185[16] of the Code on Administrative Offences would appear to be insufficiently clear and precise to comply with the principle of legality and risk unjustified interference with the right to freedom of expression.

4.2. Legitimate Aim

45. Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR require that any restriction on freedom of expression pursue a legitimate aim. Under Article 19 (3) of the ICCPR, the legitimate aims are: the respect for the rights and reputations of others, the protection of national security, public order, public health or morals. Article 10 (2) of the ECHR sets out a similar – though slightly broader – list, i.e., national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary. The grounds for restrictions listed in international instruments should not be supplemented by additional grounds in domestic legislation and should be narrowly interpreted by the authorities.[46] Restrictions shall not be applied for any purpose other

46 See UN HRC, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 22.

than those for which they were prescribed and must be directly related to the specific aim being pursued.[47]

46. The proposed restriction on identifying lawyers with their clients could be considered as having the legitimate aim of ensuring public safety, preventing crime and protecting the rights of others, including the right to legal assistance as a fundamental component of the right to a fair trial. Such restrictions are essential to upholding the rule of law and maintaining confidence in the legal system. In this respect, it is worth noting that the ECtHR has found a violation of the right to life where a lawyer was killed by the opposing party to the divorce proceedings in which s/he was acting[48] and of the right to liberty and the prohibition of ill-treatment where lawyers were detained and subjected to torture and inhuman and degrading treatment in circumstances where this seemed to have been motivated by their representation of particular clients.[49]

47. Furthermore, the UN Special Rapporteur on the independence of judges and lawyers has emphasized that the non-identification of lawyers with their clients is a safeguard, which underpins the principle of independence of the legal profession, aims at enabling lawyers to perform their professional duties freely, independently and without any fear of reprisal.[50] In addition, the provision indirectly contributes to ensuring the effective realization of the right to defence. In fact, the identification of a lawyer with their client could prevent or limit access to a legal counsel for those individuals who are accused of particularly heinous crimes.[51]

48. Article 185[16] of the Code on Administrative Offences could also be understood as a protective measure designed to shield lawyers from unwanted public exposure or misidentification that might harm their reputation or compromise their safety. Such protection aligns with international standards recognizing that privacy extends beyond strictly personal matters to encompass a person's professional role, especially where public disclosure could unfairly damage reputation or impede the exercise of professional duties.[52]

49. Restricting identification of lawyers with their clients could be particularly important in the current context of Ukraine where some lawyers are providing legal defence for alleged war criminals or persons allegedly associated with the Russian Federation, a context in which societal pressures and political tensions could otherwise compromise legal representation and the impartiality of the justice system. In this respect, Article 185[16] of the Code on Administrative Offences and the Explanatory Note to Article 185[16] appear to satisfy the legitimacy test, as the proposed provision would entail restriction on freedom of expression in pursuit of the protection of the rights and reputation of others, by aiming to preserve lawyers' professional integrity and the proper functioning of the justice system.

4.3. Necessary in a Democratic Society

50. The test of "necessary in a democratic society" means that any restriction imposed on the right to freedom of expression, whether set out in law or applied in practice, must respond to a "pressing social need", be proportionate to the legitimate aim pursued and

47 See UN HRC, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 22.
48 See *Blijakaj and Others v. Croatia*, (application no. 7448/12), 18 September 2014.
49 See *Elçi and Others v. Turkey*, (application no. 23145/93), 13 November 2003.
50 See, for example, Report of the Special Rapporteur on the Independence of Judges and Lawyers, *A/HRC/35/31*, 9 June 2017, para.50.
51 Report of the Special Rapporteur on the independence of judges and lawyers, *A/71/348*, 22 August 2016, para.41. See also *Basic Principles on the Role of Lawyers* and the *Council of Europe Convention for the Protection of the Profession of Lawyer*,
52 Article 17 of the ICCPR, Article 8 of the ECHR and the UN Basic Principles on the Role of Lawyers (Principle 16).

the reasons justifying such restriction must be relevant and sufficient.[53] The requirement to meet a "pressing social need" also means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient'.[54] The means used should be proportionate to the aim pursued, which also means that where a wide range of interventions may be suitable, the least restrictive or invasive means must always be used.[55] In addition, restrictions must not impair the essence of the right, or be aimed at causing a chilling effect on the exercise of the right to freedom of expression.[56]

51. At the same time, whether such restrictions are necessary in a democratic society depends on the scope and implementation of the legislation. Overly broad or vague limitations risk leading to arbitrary or disproportionate application, thereby unduly constraining legitimate activity and public debate, which are vital to democratic accountability.

52. There are several considerations that may lead to the conclusions that the proposed Article 185[16] of the Code on Administrative Offences may not satisfy the requirement of necessity.

53. Firstly, although the penalties cannot be regarded as substantial, the ECtHR has recognized that the imposition of a sanction, administrative or otherwise, however lenient, on the author of an expression which qualifies as political can have an undesirable chilling effect on public speech[57] and that could well be the nature of remarks identifying lawyers with their clients in certain cases, not least where the former are allegedly assisting the latter to achieve unlawful objectives.

54. Second, sub-paragraph 16 of part 1 of Article 23 of the "Law on the Bar and the Practice of Law" prohibits the identification of a lawyer with his/her client, without specifying the types of sanction in case of non-compliance, which therefore requires to be specified in other pieces of legislation. The application of this provision is subject to the stipulation in part 3 of Article 23 of the Law on the Bar which provides that *"[g]vernmental bodies, bodies of local self-government, their officials and officers shall adhere in their relations with attorneys to the Constitution of Ukraine and laws of Ukraine, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto ratified by the Verkhovna Rada of Ukraine, and to the practice of the European Court of Human Rights."* It can, therefore, be expected to be applied in a manner consistent with the enjoyment of the right to freedom of expression. On the other hand, although it is clearly subordinated to the guarantee of freedom of expression in Article 34 of the Constitution of Ukraine, the proposed new offence is broadly formulated and could be considered to impose liability for the type of behaviour, which is not clearly defined, and hence, it cannot be reasonably predicted.

55. In this respect, should the provisions operate in such a manner that the imposition of potential administrative sanctions, which are generally imposed without all the safeguards of a criminal trial, would automatically entail further legal consequences – without any judicial assessment of the underlying facts, this would not afford the person concerned the opportunity to present an effective defence and to benefit from the full range of fair trial guarantees.

56. This liability would seem to automatically arise where certain imprecise consequences occur, even without any actual intent to bring them about. As a result, the provision can

53 See, for example, ECtHR, *Janowski v. Poland* [GC], no. 25716/94, 21 January 1999, paras. 31 and 35.
54 See, for example, ECtHR, *Pleshkov and others v. Russia*, no. 29356/19 and 31119/19, 21 November 2023, para 131.
55 See UN HRC, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 34.
56 See UN HRC, *General Comment No. 34* on Article 19 of the ICCPR, CCPR/C/GC/34, para. 7.
57 See, e.g., ECtHR, *Bumbeș v. Romania*, no. 18079/15, 3 May 2022, para. 101.

be expected to apply without the proper performance of the necessary balancing exercise between the need to protect lawyers and the right to freedom of expression of the person whose oral or written comments provide the basis for liability. Thus, this may lead to a disproportionate interference with the exercise of the right to freedom of expression that is not necessary in a democratic society.

57. Secondly, it is important to note that the general nature of the constitutive elements of the administrative offence does not necessarily include any significant consequences for the lawyers concerned that flow from being identified with their clients. This is in contrast to Article 6 (5) of the CoE Convention for the Protection of the Profession of Lawyer which requires States Parties to ensure that *"lawyers do not suffer adverse consequences as a result of being identified with their clients or their clients' cause"*. Although Ukraine has not yet ratified the Convention, it is worth underlining that the Convention does not prohibit the identification of lawyers with their clients *per se*; rather, it aims to prevent statements identifying a lawyer with a client, insofar as such identification may give rise to negative or adverse consequences, such as intimidation, harassment, or obstruction in the performance of professional duties.[58]

58. Furthermore, the Convention underscores that this protection must be applied in harmony with the right to freedom of expression guaranteed under the ECHR and national laws. The Explanatory Report also elaborates that *"It should be read in conjunction with Article 9, paragraph 4, as the observance of the obligation arising under this provision will be particularly important as a means of ensuring that no adverse consequences flow from any identification of lawyers with their clients or their clients' cause. The need to ensure that such adverse consequences do not occur is of vital importance as identification with their clients or their clients' cause has resulted in lawyers being subjected to physical attacks, threats, harassment, and intimidation, and in serious hindrance and interference in the carrying out of their professional activities […] Therefore, this provision should be applied taking into account the balance to be reached with freedom of expression."*[59] It further notes that *"[t]he adverse consequences to which the paragraph is directed can take many forms that reach a degree of seriousness, notably threats, physical attacks or intimidation through legal action taken by private individuals and disciplinary, criminal, or administrative proceedings."*[60] The seriousness of the consequences envisaged in the Convention is much more likely than the proposed offence in Article 185[16] to meet the threshold for any restriction on the exercise of freedom of expression being necessary in a democratic society.

59. In addition, the broad range of means of public communication contemplated under Article 185[16] of the Code on Administrative Offences (e.g., applying to civil society organizations, digital platforms, social networks and other Internet resources) implicates the right to freedom of expression not only for media professionals but also for ordinary citizens/individuals engaged in online discussion. Reporting on lawyers' involvement in significant cases, even when it incidentally "links" them to clients, can serve legitimate public interest functions. An overbroad and vague prohibition risks overprotection of professional reputation at the expense of freedom of expression. In one notable case, the ECtHR examined the tension between professional reputation and freedom of expression in media reporting about lawyers involved in high-profile proceedings.[61] The Court reaffirmed that while lawyers, as participants in the

58 See the *Council of Europe Convention for the Protection of the Profession of Lawyer*, Article 6.5.
59 See *Explanatory Report to the Council of Europe Convention for the Protection of the Profession of Lawyer*, para. 52.
60 *Ibid.*
61 See ECtHR, *Kajganić v. Serbia*, no. 27958/16.8 October 2024.

administration of justice, are subject to a certain degree of public scrutiny, any interference with their rights must remain proportionate and mindful of their essential role in safeguarding fair trial rights. Importantly, the ECtHR judgment underscores that freedom of expression under Article 10 of the ECHR extends to commentary and debate about the conduct of legal professionals when such discussion contributes to matters of public interest.[62] By broadly restricting the ability to discuss (or critique) lawyers' actions publicly, Article 185[16] of the Code on Administrative Offences may have a chilling effect on the legitimate expression, as well as on reporting, media scrutiny and public debate. If the proposed new provision is used to sanction journalists, bloggers or public associations purely for linking a lawyer to a client, even in the context of public-interest debate, then the risk is that legitimate expression may be penalized, and this may deter such expression out of fear of sanctions, hence, unduly restricting freedom of expression.

60. **Thus, notwithstanding the legitimate aim pursued by the introduction of an administrative sanction in case of identification of lawyers with their clients, the scope and formulation of the proposed Article 185[16] of the Code on Administrative Offences are excessively broad and likely to restrict legitimate expression made in the public interest. The provision is not narrowly or strictly circumscribed, as it fails *inter alia* to refer to the seriousness of the adverse consequences for lawyers that it seeks to prevent, and that may justify restricting freedom of expression.**

4.4. Proportionality of Sanctions

61. The sanctions envisaged under Article 185[16] of the Code on Administrative Offences consist of fines of 200–300 non-taxable minimum incomes (i.e. 3,400–5,100 UAH, approximately 70-105 EUR) for a first violation, and for officials 300–400 (UAH 5,100–6,800 UAH, approximately 105-140 EUR), while repeated violations within a year trigger fines of 600–800 non-taxable minimum incomes (10,200–13,600 UAH, approximately 210-280 EUR)[63] – which should also be considered in light of the average monthly salary of 26,913 UAH[64] (approximately 540 EUR).

62. While these penalties aim to protect the integrity of the legal profession and the confidentiality of lawyer-client relationships, several aspects raise concerns from a proportionality perspective.

63. As noted above, Article 185[16] does not require proof of harmful intent or actual obstruction or adverse consequences, meaning even neutral reporting or discussion could trigger substantial fines. **Without clear thresholds for harm and/or intent, the sanctions risk exceeding what is necessary to protect lawyer-client relationship, while at the same time, undermining freedom of expression.**

62 See also *Studio Monitori and Others v. Georgia*, (Applications nos. 44920/09 and 8942/10), where the has recognized a fundamental difference between lawyers and journalists, given lawyers' position as officers of the court who do not fall within the category of the "watchdogs of democracy"

63 See the *non-taxable minimum income* of citizens in 20125 is set at UAH 17. This is defined in paragraph 5 of subsection 1 of section XX of the Tax Code of Ukraine.

64 See <Main page Ukrstat | State Statistics Service of Ukraine>.

5. Interference in the Activities of a Lawyer (Proposed Amendments to Article 397 of the Criminal Code)

64. The proposed amendments to Article 397 of the Criminal Code would clarify and expand its scope by defining specific forms of interference in the activities of a lawyer (see paras. 27 and 28 above for a detailed overview of the content of these amendments).

65. The stated objective of these proposed amendments, namely, to strengthen the protection of lawyers in the context of increasing instances of unlawful interference by law enforcement bodies, including wiretapping or searches conducted without judicial authorization, is consistent with the international obligation to ensure the independence and security of legal professionals.[65] In principle, these amendments could contribute to strengthening the protection of the right to a fair trial and the right to respect for private life, home, and correspondence, particularly by safeguarding lawyers' access to courts, the confidentiality of lawyer–client communications, and the protection of professional privilege. In this respect, it is noteworthy that the CoE Convention for the Protection of the Profession of Lawyer also contains guarantees related to access to clients and courts, the confidentiality of communications, and protection against interference with professional activities, as set out in its Articles 6 and 9.[66]

66. However, these amendments also raise concerns as the scope of the proposed criminal offences appears not sufficiently foreseeable. In addition, it is questionable whether the proposed criminal offences enhance the protection afforded by existing provisions.

5.1. Article 397 (1) of the Criminal Code

67. Proposed amendments to Article 397 (1) of the Criminal Code expand the existing provision by enumerating specific actions that constitute interference with a lawyer's activities. These include the "*illegal obstruction*" of a lawyer's arrival at a court, prosecution authorities and other enumerated places where lawyers might conduct their activities; "*illegal obstruction of a meeting between a lawyer and a person to whom legal assistance is provided*"; and "*any other intentional obstruction of the professional activities of a lawyer and the exercise of his powers to defend or represent a person*".

68. Although the specification of particular lawyer's activities in which interference should be prohibited might appear helpful, the reference to "illegal obstruction of a lawyer's arrival at a court" and "illegal obstruction of a meeting" risk being unclear as to when such obstruction begins, thereby making it difficult to foresee when liability under the proposed offence would arise. This contrasts with the current version of Article 397, which focuses on obstruction in the provision of legal assistance and violations of guarantees established by law for their professional activities, implicitly referring to those set out in Article 23 of the "Law on the Bar and Practice of Law", as well as breaches of professional secrecy.

5.2. Article 397 (2) of the Criminal Code

69. Proposed amendment to Article 397 (2) of the Criminal Code introduces a new criminal offence of obstruction in the activities of a lawyer involving interference with confidential communications, entry into premises, inspections, searches (including

65 See Council of Europe, *Convention for the Protection of the Profession of Lawyers*, art. 6.5.
66 See Council of Europe, *Convention for the Protection of the Profession of Lawyers*, arts. 6 and 9.

personal ones) and demanding or seizing documents leading to access by unauthorized persons to lawyer-client privilege and/or its disclosure.

70. Although this new offence may appear to broaden the protection of professional secrecy provided in Article 397 (1) of the Criminal Code, this protection of secrecy and other related matters such as restrictions on communications, the demanding or seizing of documents, and searches, are already covered by guarantees of the practice of law set out in Article 23 of the "Law on the Bar and Practice of Law". These protections therefore would seem to already fall within the scope of the offence established under Article 397 (1) of the Criminal Code, as well as the existing offence concerning the inviolability of the home under Article 162 of the Criminal Code. The only notable difference is that Article 397 (2) provides for a higher range of fines than Article 397 (1) (i.e., 300-1,000 non-taxable minimum income, 5,100-17,000 UAH, 105-305 EUR, instead of 200-700 non-taxable minimum income, 3,400-11,900 UAH, 70-245 EUR). Nonetheless, this alone does not seem to justify the creation of an additional offence, which could in practice generate uncertainty regarding how particular conduct alleged to have affected a lawyer should be classified or prosecuted.

5.3. Article 397 (3) of the Criminal Code

71. The proposed offence under Article 397 (3), which criminalizes "influencing" a lawyer "in any form" with the aim of obstructing the performance of their statutory powers to defend, represent, or otherwise provide legal assistance, while excluding conduct already addressed under Articles 398-400 of the Criminal Code, is problematic in terms of its intended scope. Clearly, any form of influence involving threats or physical actions covered by Articles 398-400 would fall outside this provision. Yet neither should it cover influence effected through identification of the lawyer with a client as that already covers the exertion of negative pressure. The provision might be understood as targeting improper inducements aimed at influencing a lawyer's professional conduct. However, this would be better articulated explicitly or dealt with under existing offences relating to bribery or interference with the administration of justice. Given the lack of precision in the current wording of Article 397 (3) of the Criminal Code, there remains a significant risk that individuals would be unable to foresee whether a particular interaction or communication with a lawyer could give rise to criminal liability.

5.4. Article 397 (4) of the Criminal Code

72. Lastly, Article 397 (4) of the Criminal Code introduces enhanced penalties where the acts are committed by an official using their official position. This would increase the range of fines (700-1,500 non-taxable minimum income, i.e. 11,900-25,500 UAH, approximately 245-525 EUR, instead of 300-500 non-taxable minimum income, i.e. 5,100-8500 UAH, approximately 105-175 EUR, when committed by individuals), while leaving the other penalties unchanged. Although this enhancement aligns in part with the stated aim of strengthening protection for lawyers, the broader concerns raised above regarding the foreseeability of the proposed criminal offences provided in Article 397 (1), 397 (2) and 397 (3) of the Criminal Code remain applicable.

73. **Overall, the proposed new criminal offences in Article 397 add limited substantive protection for lawyers, and their vague formulation risks contravening the principle of legality and predictability of criminal law.**

6. Conclusion

74. The stated objective of the Law, namely, to strengthen the protection of lawyers in the context of increasing instances of unlawful interference, is commendable and generally consistent with the international standards stemming from the UN Basic Principles on the Role of Lawyers and the CoE Convention for the Protection of the Profession of Lawyer (although the latter has not yet been ratified by Ukraine). These standards aim to ensure that legal professionals can perform their duties with independence and without obstruction, improper hindrance or interference, and without being subjected to attacks, threats, harassment or intimidation. However, in light of the above, the proposed Article 185[16] of the Code on Administrative Offences, along with several aspects of the proposed amendments to Article 397 of the Criminal Code, fall short of the requirement that the scope of offences be sufficiently precise to ensure foreseeability as to when liability will arise, and comply with the principle of necessity and proportionality.

75. More specifically, **while these proposed offences may pursue a legitimate aim, Article 185[16] does not satisfy the requirements that any interference with freedom of expression be provided by law and necessary in a democratic society. The introduction of administrative liability for the fact of "identifying" a lawyer with their client, regardless of whether such identification intended or caused harm, risks creating undue restrictions on public discourse of information of public interest and a chilling effect on the exercise of the right to freedom of expression. It is also questionable whether the amendments to Article 397 provide any real added value, even if the issue of foreseeability were disregarded.**

76. **In light of the foregoing, it is recommended to use the opportunity of the upcoming revision of the "Law on the Bar and the Practice of Law", as required pursuant to the European Integration Roadmap on the Rule of Law, to engage in more in-depth and inclusive discussions with representatives of the legal profession, lawyers, other providing legal assistance, civil society representatives to discuss and design a more comprehensive framework of policy and legal measures to ensure the effective protection of lawyers and other providing legal assistance.**

7. Process of Developing and Adopting the Law

77. The Draft Law was introduced in December 2024 and subsequently adopted in its second reading on 16 July 2025. Public debate arose only after its adoption, revealing a clear divide between supporters and opponents of the measure. This timing suggests that not all relevant stakeholders were adequately consulted during the drafting process. In this regard, ODIHR recalls the importance of an evidenced-based, inclusive, transparent, and participatory lawmaking process, as the Draft Law still needs to be signed by the President.[67]

78. In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure.[68] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*".[69] The *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (2024) underline the importance of evidence-

67 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6 and 7.
68 See *1990 OSCE Copenhagen Document*, para. 5.8.
69 See 1991 *OSCE Moscow Document*, para. 18.1.

based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages.[70]

79. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case lawyers, other providing legal assistance, the media, civil society organizations in particular. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[71]

80. In light of the above, **the public authorities should have ensured that the development of the Law be preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with lawyers, other representatives of the legal profession, other providers of legal assistance, academia, civil society organizations, which should enable equal opportunities for women and men to participate**.

81. Lastly, the Draft Law does not reflect gender-inclusive forms, by instead using both masculine and feminine, which is inconsistent with established international good practice.[72] **It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word, whenever possible. Alternatively, the plural form of the respective noun could be used instead of the singular ("they").**

[END OF TEXT]

70 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.

71 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170. See also ODIHR *Assessment of the Legislative Process in Georgia* (30 January 2015), paras. 33-34. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs.

72 See, among others, ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 133; *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective* (2020), paras. 105-107. See also See *UN Guidelines for Gender-Inclusive Language* in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context; and *UN Disability-Inclusive Communications Guidelines*, March 2022.